No. 01-1289

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL AND INEZ PREECE CAMPBELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review a punitive damages award in a case where: (1) the question presented is predicated on two federal-law objections that were neither pressed nor passed on below, and are not supported by the record; and (2) the body of the petition seeks factbound review of a 27,000-page record, including second-guessing of the trial judge's credibility findings.

PARTIES TO THE PROCEEDING

As the petition notes, respondent Curtis B. Campbell died after the Utah Supreme Court's decision was issued. To date no substitution of party has been made, as an executor for Mr. Campbell's estate has not yet been appointed. Respondent Inez Preece Campbell, Mr. Campbell's widow, remains a party to this litigation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

STATEMENT OF THE CASE 1

A. State Farm's Failure to Protect the Campbells From an Excess Verdict 1

B. The "Bad-Faith" Phase I Trial: Whether State Farm's Handling of the Campbell File Was Objectively Reasonable 4

C. The "Institutional" Phase II Trial: Whether State Farm's Improper Claim Handling Was Simply an "Honest Mistake," or Instead the Product of Its Unlawful Corporate Policies . . 5

D. State Farm's Posttrial Motions and Appeal . 13

REASONS FOR DENYING THE WRIT 14

I. THIS CASE PRESENTS NO QUESTION ABOUT A PUNITIVE DAMAGES AWARD "THAT PUNISHES OUT-OF-STATE CONDUCT" OR CONDUCT "UNRELATED AND DISSIMILAR TO THE CONDUCT BY THE DEFENDANT THAT GAVE RISE TO THE PLAINTIFFS' CLAIMS" 15

A. Any Objection That the Award "Punishes Out-Of-State Conduct" Was Not Preserved Below and Is Not Supported by the Record . 15

B. Any Objection That the Award Punishes Business Practices "Unrelated and Dissimilar to the Conduct That Gave Rise to the Plaintiffs' Claims" Was Not Preserved Below and Is Not Supported by the Record 19

II. NOTHING IN THE REMAINDER OF THE THE PETITION IS WORTHY OF REVIEW 21

A. The Utah Supreme Court's Application of the *BMW v. Gore* Guideposts Does Not Merit Review 21

1. The Reprehensibility Guidepost 22

2. The "Ratio" Guidepost 24

3. The "Comparable Penalties" Guidepost .. 27

B. The Utah Supreme Court's Consideration of State Farm's Wealth Does Not Merit Review . 28

CONCLUSION 30

TABLE OF AUTHORITIES

CASES: **PAGE:**

BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) ..... *passim*
Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc., 492 U.S. 257 (1989) 29
Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S. Ct. 1678 (2001) 22
Illinois v. Gates, 462 U.S. 213 (1983) 15
Inter Medical Supplies, Ltd. v. EBI Medical Systems, inc., 181 F.3d 446 (3d Cir. 1999), *cert. denied*, 528 U.S. 1076 (2000) 25
Lee v. Edwards, 101 F.3d 805 (2d Cir. 1996) 25
MacKay v. Hardy, 973 P.2d 941 (Utah 1998) 16
Murdock v. City of Memphis, 87 U.S. 590 (1874) ... 17
Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1 (1991) 24, 29
Rackley v. Fairview Care Ctrs., Inc., 23 P.3d 1022 (Utah 2001) 16
Southeastern Sec. Ins. Co. v. Hotle, 473 S.E.2d 256 (Ga. App. 1996) 25
TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993) ..... *passim*
Wilson v. IBP, Inc., 558 N.W.2d 132 (Iowa 1996), *cert. denied*, 522 U.S. 810 (1997) 25
Yee v. City of Escondido, 503 U.S. 519 (1992) 15

RULES AND BRIEFS:

Supreme Court Rule 14.1(g) 1, 15
Utah R. App. P. 24(a)(5) 16
Utah R. App. P. 24(a)(9) 16
Brief of Respondents, *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993) (No. 92-479) 26
Reply Brief of Petitioner, *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993) (No. 92-479) 25-26

BRIEF FOR RESPONDENTS IN OPPOSITION

The question presented is predicated on federal-law objections that were neither presented to nor addressed by the Utah Supreme Court, and that find no support in the record. The petition, in addition to urging review of these waived and unmeritorious objections, seeks to draw this Court into a fact-intensive review of a 27,000-page record, even urging this Court to second-guess the trial judge's credibility findings. It should be denied.

OPINIONS BELOW

The opinion of the Utah Supreme Court (Pet. App. 1a-98a) is not yet officially reported. The ruling of the Utah trial court on the amount of punitive damages (Pet. App. 99a-166a) is unreported. Other unreported rulings of the Utah trial court pertinent to the petition but omitted from petitioner's appendix are set forth in the appendix to this opposition ("Opp. App.") at 1a-37a.

STATEMENT OF THE CASE

Contrary to Rule 14.1(g), the petition ignores many facts material to the question presented, a sufficient reason to deny the petition. This statement of the case is crafted so as to both demonstrate the Rule 14.1(g) violation and provide this Court with the record summary needed to evaluate the petition even if the rule violation were to be overlooked.

A. State Farm's Failure to Protect the Campbells From an Excess Verdict

On May 22, 1981, respondent Curtis Campbell made an unsafe pass of six vehicles. He returned to his lane only one second before meeting an oncoming car driven by Todd Ospital, thereby forcing Ospital off the road. In trying to get back on the road, Ospital struck a car driven by Robert Slusher. Ospital was killed and Slusher was left permanently disabled. "[A] consensus was reached early on by investigators and witnesses that Mr. Campbell's unsafe pass had indeed caused the crash."

Pet. App. 2a.[1] State Farm's own investigator concluded that Campbell had negligently created a "hazard" that triggered Ospital's "effort to avoid a head-on collision." Opp. App. 153a-157a; Pet. App. 3a-4a.

Slusher and Ospital's estate sued Campbell. He and his wife, respondent Inez Campbell, were insured by petitioner State Farm under a $50,000 policy ($25,000 per claim). Pet. App. 2a-3a. Given then applicable joint-and-several liability rules, if Campbell were found even 1% at fault he would be liable for 100% of Slusher's damages, obviously more than $25,000. If Campbell were found more liable than Ospital, he would owe damages to Ospital's estate obviously exceeding $25,000. Opp. App. 45a-46a, 60a, 74a-75a, 251a, 292a-293a.

The Utah-based State Farm managers in charge of the Campbell file were laboring under "heavy pressure" to stay under preset annual caps on payouts pursuant to State Farm's "PP&R" policy described on pp. 6-9, *infra*. Pet. App. 133a-134a. These managers refused repeated offers to settle all claims against Campbell for his $50,000 policy limit. Without even reviewing the adverse evidence, they refused to offer any settlement. Pet. App. 3a; Opp. App. 46a, 76a-77a, 249a-250a, 296a-297a, 347a-352a. They declined to settle even after the expert witness hired by State Farm concluded "that Campbell did not allow sufficient time to safely execute his pass," and the accident happened when "he didn't look for three or four seconds." Opp. App. 248a-249a.

Despite the conclusion of its own investigator and own expert that the accident was Campbell's fault, State Farm informed Campbell that he was not at fault and

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[1] Pet. App. 2a; *see also* Opp. App. 46a, 52a-55a. All record materials cited in this opposition are reprinted in the appendix. This statement is narrowly limited to factual findings made in the opinions below (and supporting factual details set out in the Campbells' opening brief in the Utah Supreme Court) not specifically attacked in the petition. It would of course be inappropriate for State Farm to dispute these matters in its reply brief on certiorari, to which respondents are afforded no reply. The Campbells would defend the judgment based on the entire record if review were granted.

reassured the Campbells that the litigation posed no financial risk to them. Pet. App. 4a; Opp. App. 90a, 251a-253a. Campbell preferred to have the case "settled and over with" but, informed by State Farm that he was not at risk and that whether or not to settle was up to it, he dutifully went forward. Opp. App. 79a, 90a, 105a.

At trial in September 1983, the jury found Campbell 100% at fault and awarded damages to Slusher and Ospital's estate totaling several times Campbell's policy limit and exceeding Campbell's other assets. State Farm then offered to pay only the $50,000 policy limit, leaving the Campbells responsible for the rest. A law firm retained by a family member warned them that their assets would not suffice to cover the verdict, and that their house might be taken within a matter of days. Pet. App. 4a-5a; Opp. App. 61a-66a, 72a-73a.

The Campbells were in utter shock. Campbell, 65 years old, had overcome many obstacles to reach retirement and greatly valued orderliness and financial responsibility. He now faced bankruptcy. He and his wife "spent many, many nights never sleeping . . . discussing what we would do." His family attorneys described Campbell as "personally very devastated," "distraught," "tied up in knots" — so "fragile" and "greatly distressed" that they feared he might suffer another stroke or a heart attack. Opp. App. 61a-62a, 64a, 72a-73a, 104a-107a.

The State Farm manager in charge of the Campbell file was well aware that "an excess verdict can be very traumatic" to insureds, and that the longer it exists, "the more traumatic it is for them." Opp. App. 367a; *see also* Opp. App. 255a. Yet State Farm did nothing to protect the Campbells from the verdict. Plaintiffs threatened to execute on the judgments if no bond was posted. State Farm merely offered to post a bond for the $50,000 policy limit, insisting that the Campbells use their own assets to finance the rest of the bond. State Farm was "willing to let Mr. Campbell lose his home while they appealed the case" — simply "deserting" the Campbells while "they faced imminent financial ruin," as the trial court put it. Opp. App. 29a-30a, 34a-35a, 63a, 67a; Pet. App. 5a.

Because State Farm refused to protect them, the Campbells were forced into extended negotiations with the victims of the accident Campbell had caused. For 15 months following the verdict the Campbells lived under the threat that those victims might seize their assets. In particular, Slusher, with large medical bills and no medical insurance, had an immediate need for money. The Campbells' fate remained uncertain until December 6, 1984, when the parties executed an agreement in which Campbell gave up 90% of one asset (his recovery from litigation against State Farm, which he was obligated under that agreement to pursue) to prevent the seizure of his other assets. Opp. App. 66a-70a, 77a-78a.

B. The "Bad-Faith" Phase I Trial: Whether State Farm's Handling of the Campbell File Was Objectively Reasonable

When the underlying litigation was over, the Campbells filed suit against State Farm, alleging fraud. Pet. App. 5a.[2] State Farm's contested motion to bifurcate the trial was granted. Pet. App. 6a, 153a-154a. State Farm "designed the bifurcation, getting precisely what it asked for in terms of what would be covered in Phase I, and what would be reserved for Phase II." Pet. App. 153a; Opp. App. 25a-27a. The purpose of this bifurcation "was to separate the so-called 'bad-faith phase' . . . from what the parties termed the 'institutional phase,'" which State Farm indicated "would involve a very lengthy trial, as it would deal with State Farm's corporate policies and practices" — matters that need not be covered if "the jury found no bad-faith claim handling" at the outset. Pet. App. 153a-154a; *see also* Pet. App. 6a.

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[2] Because the Utah Supreme Court held that all damages received by the Campbells are sustainable on the fraud count, Pet. App. 64a, which was the focus of the Campbells' punitive damages theory, this opposition will discuss only the fraud count. The Campbells also proved breach of the duty of good faith and fair dealing, breach of fiduciary duty, and intentional infliction of emotional distress.

The Phase I issue was whether State Farm acted in an objectively unreasonable manner in declining to settle the underlying litigation. The Campbells were forced to proceed under "heavy evidentiary restrictions" that permitted only "evidence of State Farm's treatment of the Campbells, with no consideration of State Farm's general claim-handling procedures," which meant "excluding evidence relevant to the Phase I issues." Pet. App. 153a. The jury found "that State Farm had acted unreasonably and in bad faith in its decision to take the case to trial because there was a substantial likelihood of an excess judgment against Mr. Campbell." Pet. App. 6a.

C. The "Institutional" Phase II Trial: Whether State Farm's Improper Claim Handling Was Simply an "Honest Mistake," or Instead the Product of Its Unlawful Corporate Policies

Under State Farm's bifurcation plan, the parties next proceeded to what they "termed the 'institutional phase.'" Pet. App. 154a. As the trial court noted, now that it had been established that State Farm had acted in an objectively unreasonable manner, the "central issue" was "why did State Farm do what it did to the Campbells"?

> The possible answers were: (1) it was inexplicable, there is simply no explanation; (2) it was a foolish or honest mistake; or (3) it was a result of two corporate policies, one to encourage or enforce a requirement that State Farm's claims handling be improperly used to enhance corporate profits, and second to conceal this profitable policy to evade legal and regulatory accountability for it.
>
> Stated simply and in short form that third possibility was the plaintiffs' institutional case.

Pet App. 154a-155a; *see also* Pet. App. 45a.

Following numerous evidentiary hearings, the trial court "issued several detailed orders . . . tightly controlling the range of proof that would be allowed the Campbells in establishing their claims," so that "the

institutional case was fully and fairly tried." Pet. App. 155a-158a; *see also* Opp. App. 1a-24a; Pet. App. 37a-45a.[3] The Campbells put on "a large body of evidence" that they had been defrauded of their insurance benefits under two intersecting unlawful corporate policies. Pet. App. 114a. Their "direct evidence," Pet. App. 137a, included: (1) high-level corporate documents setting forth official policy; (2) testimony from experts who had examined thousands of pages of corporate records relating to these policies; and (3) testimony from numerous current and former State Farm employees.

The Unlawful "PP&R" Policy. Because "the core function of the insurance business is to timely pay fair value in the event of a loss, . . . it is universally accepted within the industry that the compensation of claim adjusters cannot be set based on whether or not their claim payouts save the company money." Pet. App. 115a-116a.[4] On May 1, 1979, State Farm adopted a policy

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[3] State Farm has abandoned any contention that it was denied a fair trial. On appeal below it made none of the four federal due process arguments for a new trial that it advanced in the trial court: *First*, that due process was violated when the court failed to trifurcate the trial. Posttrial Mem. filed Nov. 22, 1996, at 58-63 (denied, Opp. App. 25a-27a). *Second*, that the "jury's aversion to discussing its decisions" with State Farm's counsel after the trial created a violation of due process. *Id.* at 63-65 (denied, R. 10123-28). *Third*, that, supposedly at the Campbells' request, "the jury unconstitutionally attempted to punish State Farm for conduct occurring entirely in other states," warranting "a new trial on punitive damages." *Id.* at 88-97 (denied, Pet. App. 103a-106a). *Fourth*, that the punitive damages were so excessive that they must have been the product of passion and prejudice on the jury's part, requiring a new trial, not just a remittitur. *Id.* at 112-17 (denied, Pet. App. 147a-148a).

[4] Insurance companies are expected to maximize profits for their owners, but not "by intentionally underpaying claims." They "must focus on building profits by such means as enhancing their ability accurately to assess risk and thus price their product appropriately, increasing their customer base by effective marketing, maximizing their investment income on premium monies prior to payout, and achieving efficiencies in their operations generally." Pet. App. 115a.

deviating from that industry standard, promulgating its "Performance, Planning and Review," or "PP&R" policy. It sets out an "inherently wrongful method of running an insurance claims operation," Pet. App. 116a-117a, with "the explicit objective of using the claims-adjustment process as a profit center." Pet. App. 116a.

The PP&R policy "seeks to 'reward merit salary-wise.'" "'Merit,' in the context of claims adjusting, is defined by the PP&R program as including the ability to keep below preset targets for payouts each year" that are not tied "to the severity and fair value of the claims that are being handled" but instead constitute "arbitrary payment goals . . . for claims that have not yet arisen, concerning accidents that have not yet happened." Pet. App. 117a. Executives reinforce the policy by exhorting adjusters to "shore up the bottom line" and cut payouts "to ensure that State Farm has the 'most profitable claim service in the industry.'" Pet. App. 117a-118a.

Thus, the wrongdoing at the heart of this case is in no way "generalized" or "unbounded" in character, Pet. 8, defined in some sort of "catch-all manner." Pet. 15. Rather, it is a concrete, official policy that uses arbitrary payout caps to pad profits unlawfully. Contrary to the assertion that there is a distinction between first-party and third-party claims, Pet. 2 n.1, 16 n.9, the evidence "clearly established" that the PP&R policy "has applied equally to the handling of both third-party and first-party claims," Pet. App. 119a, and is equally fraudulent regardless of the type of claim involved. Pet. App. 118a.

Insurance experts testified that this PP&R policy is "inherently wrong" — an unlawful incentive system that "cannot be justified 'in any way.'" "They described such an incentive system as simply 'taboo in the insurance industry'; as 'grossly unfair' to consumers . . .; as inherently fraudulent if not fully disclosed to the consumer (given that, if consumers were informed in advance of the incentive system no one would buy State Farm's policies); and as 'creat[ing] a corporate culture that is predatory' and 'take[s] advantage of the gullible and defenseless people.'" Pet. App. 46a, 118a. The trial court found the PP&R policy to be "a company-wide

claim-handling policy of providing incentives to adjusters to systematically deny Utah consumers benefits owed to them under insurance policies" — incentives "never disclosed to consumers," Pet. App. 110-111a.

To establish the impact of the unlawful PP&R policy on Utah consumers like themselves, the Campbells called four current or former Utah employees of State Farm who testified to "unrelenting pressure to keep down payouts to meet arbitrary claim payment goals." Pet. App. 119a-120a. *E.g.*, Opp. App. 87a-88a, 91a-92a, 157a-163a, 203a-205a, 211a-212a. Cross-examination of the two Utah-based managers who supervised the Campbell file produced "compelling evidence" that the PP&R policy imposed "explicit preset average payout goals" on managers, Pet. App. 120a, and that the "heavy pressure" imposed by "the unlawful profit scheme" caused "the bad-faith claim handling" of the Campbell file. Pet. App. 133a-134a; Opp. App. 337a-342a. *See also* Opp. App. 120a-123a, 159a-163a, 203a-205a, 212a, 290a-291a. Cross-examination of other State Farm employees, all from the "Mountain States" regional office covering Utah, provided further evidence of the existence and effects of the unlawful PP&R policy. *E.g.*, Opp. App. 257a-258a, 277a, 281a-284a, 309a-312a, 315a-318a, 328a-330a.

The Campbells introduced testimony from State Farm employees based in other states, as well as expert testimony, proving that "the PP&R program was not a local anomaly but was a consistent, nationwide feature of State Farm's business operations, orchestrated from the highest levels of corporate management." Pet. App. 120a. *E.g.*, Opp. App. 108a-127a, 144a-149a, 164a-165a, 167a-172a, 215a-217a, 219a-221a, 259a-261a.

Testimony from State Farm employees and expert testimony demonstrated that State Farm adjusters routinely use "a wide variety of highly unfair and dishonest methods to drive down average payouts on claims" as a means of staying within the payout caps imposed by the unlawful PP&R policy. Pet. App. 121a. Expert testimony established that State Farm's unlawful PP&R policy has been "hugely profitable" for State Farm, adding "tremendous revenues" to the company's coffers.

Opp. App. 127a; *see also* Pet. App. 140a. *E.g.*, Opp. App. 50a-51a, 100a-103a.

Contrary to State Farm's assertions that it has ended the unlawful PP&R policy, Pet. 3 n.2, "[t]he Campbells presented ample evidence that this incentive system (including its improper goals) . . . remains in operation today. Only the documentation has changed, for appearances sake." Pet. App. 140a-141a. "[T]he practice was still being carried out at the time of trial in 1996." Pet. App. 120a-121a. *See also* Opp. App. 144a-145a, 147a-149a, 282a-284a.

The Unlawful Evasion Policy. The "institutional" Phase II trial also demonstrated the existence of a closely related State Farm scheme to conceal the PP&R policy and "evade legal and regulatory accountability for it," Pet. App. 155a, using a "variety of wrongful means." Pet. App. 122a. The Campbells argued that the existence of such an evasion sheme required the imposition of much higher punitive damages than would otherwise be warranted. State Farm's evasion scheme policy was shown, and found, to have several components.

1. State Farm trains its adjusters to target the "consumers who are least knowledgeable about their rights and thus most vulnerable to trickery or deceit," Pet. App. 122a, who are viewed by adjusters as "the weakest of the herd." Pet. App. 122a. They are seen as "less likely to object or take legal action." Targeted groups included the poor, racial or ethnic minorities, women, and the elderly. Pet. App. 18a-19a. The Campbells were a retired couple. Opp. App. 29a, 34a.

2. State Farm systematically destroys documents about the PP&R scheme, even while they are the subject of discovery in litigation. Pet. App. 123a-126a; *see also* Pet. App. 19a. An example is the 1979 PP&R document (see pp. 6-7, *supra*), which "was not produced by State Farm, which aims to have destroyed it, but was obtained by the Campbells by subpoena from a former State Farm claims manager." Pet. App. 116a, 132a; Opp. App. 88a. Confronted at trial with this document, Buck Moskalski, the top State Farm executive in charge of the regional

office overseeing Utah operations, testified that it "should have been destroyed a long time ago." Opp. App. 281a.

Indeed, shortly after this lawsuit was filed State Farm launched a massive effort to destroy all traces of its PP&R policy, using tactics that its own expert witness agreed were "abhorrent." Pet. App. 125a; Opp. App. 362a-363a. (At Pet. 23-24 n.12, State Farm ignores the finding of intentional document destruction, Pet. App. 125a, and simply quotes, out of context, a preliminary discussion by the trial court two years earlier during finalization of jury instructions.) For example, in 1990 Moskalski, himself a lawyer, sent a company attorney to Utah to oversee the destruction of all information on past claim-handling procedures that the Campbells and other litigants had requested in discovery. Opp. App. 19a-24a, 144a, 193a-197a, 205a-211a, 221a-222a, 267a-270a. Whereas in the mid-1980s State Farm had a special historical department with a complete archive of its past corporate policies, by the time of trial in 1996 it had destroyed every last copy. Opp. App. 132a-134a, 144a, 197a-199a, 223a, 358a-359a, 363a-364a. Now, during discovery into its corporate policies, State Farm's "consistent theme" is that "they don't have anything that's old, they just have new stuff." Opp. App. 223a.

Similarly, State Farm goes "to extraordinary lengths to stop damaging documents from being created in the first place," so as to shield top executives from knowledge of its misconduct. This "deprive[s] victims of State Farm's misconduct of information useful to proving a pattern or practice of wrongdoing" and "give[s] top management plausible deniability, making it easier for them to depict instances of wrongdoing as simply reflecting an isolated, 'honest mistake.'" Pet. App. 126a.

The wall State Farm has created to shield top executives from such information is so high that the 28 semi-autonomous regional offices are directed never to report excess verdicts, bad-faith verdicts, or punitive damages verdicts to headquarters, or even to keep records on them. Pet. App. 112a; Opp. App. 51a, 109a-110a, 127a-132a, 201a-203a, 223a, 273a-275a. Indeed, Moskalski testified that if the jury awarded punitive

damages *in this case* he would *not* report the award to headquarters. Only if it was "big enough" that someone at headquarters learned of it and asked him about it would he "talk to corporate about it." Opp. App. 273a. Uncontroverted evidence proved that an earlier $100 million punitive verdict in Texas had not been "big enough" for top executives to be told of it. Pet. App. 17a, 30a, 112a-113a; *see also* Opp. App. 109a-110a, 127a-132a, 134a-137a, 139a-143a, 149a-152a, 226a-227a. The specifics of that case, including its settlement, Pet. 5, 21, are entirely irrelevant to the point of this evidence.

3. As part of its evasion policy State Farm also systematically manipulates the contents of claim files "to provide a false, innocent picture of how the claim was handled, in an effort to minimize exposure to later lawsuits alleging bad-faith claim handling." Pet. App. 127a. "[O]fficial company documents . . . indicat[e] that this practice reflects a long standing philosophy among State Farm management." *Id.* Numerous examples were offered at trial. *See* Pet. App. 127a-128a; Opp. App. 47a-50a, 160a-161a, 221a-222a, 224a.

4. Finally, the evasion policy uses improper means to intimidate claimants, witnesses, and attorneys who challenge State Farm. Pet. App. at 128a-132a; *see also* Pet. App. 19a. For example, two State Farm manuals identify marital infidelity as a subject to use against claimants to deter complaints of underpayment. Pet. App. 129a-130a. "State Farm resorts to similar tactics in an effort to intimidate witnesses from opposing it in bad-faith litigation," including one witness in this case. Pet. App. 130a. Its training endorses "mad dog defense tactics" designed "to wear out opposing attorneys with unending, vexatious and expensive litigation tactics," like "making meritless objections, claiming false privileges, and destroying documents or claiming that they don't exist." Pet. App. 131a-132a.

"The record indicates that these evasion tactics are so successful that State Farm trains its employees to ignore the threat of punitive damages in making their claim-handling decisions." Pet. App. 122a. Indeed, the record contains direct evidence that State Farm

reassures its adjusters that its statistics show that the odds are 1 in 50,000 against it being punished for mishandling a file, because only 1 in 5 will "actually discover it and pursue it"; of those, only "1 in 100 that had a serious disagreement with State Farm would actually proceed to get an attorney and file a lawsuit"; and of those, only "1 in 100 that filed a lawsuit would then make it to a trial." Opp. App. 164a-165a, 167a, 171a-172a. State Farm asserts that the Utah Supreme Court erred in saying the trial court relied on this evidence. Pet. 19-20. But as just noted, the trial court held "that State Farm trains its employees to ignore the threat of punitive damages," Pet. App. 122a, obviously relying on the "1 in 50,000" evidence although it was "not feasible" for it to describe each piece of evidence. Pet. App. 165a. State Farm also asserts that this evidence is "apparently" irrelevant to third-party claim handling. Pet. 20. The record does not support that assertion. The trial court rejected the asserted distinction. Pet. App. 119a.

State Farm's "Honest Mistake" Defense, and the Jury's Verdict. To rebut the Campbells' "unlawful policy" theory, State Farm introduced testimony from a dozen employees who denied knowledge of any fraudulent PP&R policy operating to arbitrarily limit claim payouts. *E.g.*, Opp. App. 256a-257a, 261a-263a, 295a-296a, 308a-309a, 313a-314a, 342a. The employees responsible for the Campbell file insisted that they simply made an honest mistake in refusing to settle the Campbell litigation. Opp. App. 82a, 344a-345a, 366a-368a. On cross-examination, several of these employees actually provided further evidence of the operation of the PP&R scheme. See p. 8, *supra*.

State Farm also called four expert witnesses who had served as state insurance regulators and who appeared essentially as character witnesses. They claimed extensive knowledge of State Farm's operations and business reputation, stated that they would know if State Farm had a fraudulent policy of offering unlawful incentives to adjusters, and attested that they were unaware of any such policy. Opp. App. 301a-302a, 321a-

322a, 354a-355a, 369a. Their level of knowledge was "extremely open to question." Pet. App. 159a-160a. Cross-examination and rebuttal/impeachment expert testimony introduced by the Campbells demonstrated the broad range of adverse information about State Farm's activities of which these regulators knew nothing (e.g., numerous reported cases finding wrongdoing by State Farm and numerous pending court actions). Opp. App. 4a-5a, 8a-9a, 223a-224a, 236a-238a, 302a-307a, 322a-326a, 356a, 387a-390a.

The jury, unpersuaded by State Farm's "honest mistake" defense, found that State Farm had defrauded the Campbells. It awarded general damages of $1.4 million to Curtis Campbell and $1.2 million to Inez Campbell and special damages of $911.25 for out-of-pocket legal expenses. It awarded punitive damages against State Farm of $145 million. Pet. App. 7a.

D. State Farm's Posttrial Motions and Appeal

The trial court rejected all of State Farm's posttrial motions except its motion for a remittitur. As to compensatory damages, the trial court remitted the awards to $600,000 for Curtis Campbell and $400,000 for Inez Campbell. Opp. App. 32a-37a. As to punitive damages, the trial court rejected State Farm's federal substantive due process attack and held that six of the seven applicable state-law factors supported the award in its entirety. Based solely on its analysis of the state-law "ratio" factor, the trial court remitted the punitive damages award to $25 million. Pet. App. 106a-148a.

Still dissatisfied with the outcome of this litigation, State Farm appealed, thereby enabling the Campbells to cross appeal from the reduction of the punitive damages award. On appeal State Farm abandoned all the federal-law arguments for a new trial that it had made in the trial court. See note 3, *supra*. The only federal-law argument pressed by State Farm on appeal was that, on this particular record, the punitive damages award was "grossly excessive" in violation of federal substantive due process and thus should be remitted. Br. of Appellant

71-89; Reply Br. of Appellant 35-48. (Copies of the parties' briefs are lodged with the Clerk.)

The Utah Supreme Court rejected that argument. It held that the trial court had erred in mechanically applying the state-law "ratio" factor to reduce the punitive damages award at all, and it upheld the jury's award in full. Pet. App. 12a-37a.

REASONS FOR DENYING THE WRIT

State Farm's question presented is predicated upon two objections to the punitive damages award: (1) that it punishes State Farm for out-of-state conduct; and (2) that it punishes State Farm for conduct "unrelated and dissimilar to" the conduct "that gave rise to the plaintiff's claims." Pet. i. State Farm asks whether it was constitutional error to uphold an award supposedly bearing these faults when the award is $145 million, and is 145 times the size of the compensatory damage award.

Both predicates are unfounded, as we demonstrate in Part I of this opposition. Moreover, no federal-law objection on either point was preserved below. Nor is either objection factually supportable on this record. The failure of *either* predicate objection is enough to deny the petition on the ground that the case, by definition, does not pose the question presented by State Farm.

Even if that defect were not fatal to State Farm's entire effort, certiorari should still be denied. As explained in Part II, none of the remaining issues the petition seeks to raise is certworthy. Both courts below properly interpreted this Court's precedents in reviewing State Farm's "gross excessiveness" claim. There is no reason for this Court to commit its scarce resources to a third review of State Farm's factbound objections, which are based on a tendentious, highly misleading depiction of the 27,000-page trial record in this case.

I. THIS CASE PRESENTS NO QUESTION ABOUT A PUNITIVE DAMAGES AWARD "THAT PUNISHES OUT-OF-STATE CONDUCT" OR CONDUCT "UNRELATED AND DISSIMILAR TO THE CONDUCT BY THE DEFENDANT THAT GAVE RISE TO THE PLAINTIFFS' CLAIMS"

Neither of State Farm's predicate objections was pressed or passed on below, and neither is supported by the record. Therefore the question that has been framed based on those objections is not actually presented here.

A. Any Objection That the Award "Punishes Out-Of-State Conduct" Was Not Preserved Below and Is Not Supported by the Record

State Farm claims "constitutional error" in the punitive damages award on the basis that it "punishes out-of-state conduct." Pet. i, 10-14. This Court has long held that it will not review a federal-law issue arising out of state-court litigation where the issue has neither (1) been specifically and timely pressed by the litigant in the state court, nor (2) actually passed on by the state appellate court. *E.g., TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 463-64 (1993) (plurality opinion); *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *Illinois v. Gates*, 462 U.S. 213, 217-23 (1983). This requirement is implemented by Rule 14.1(g)(i), requiring that where "review of a state-court judgment is sought," the statement of the case must specify how the federal question was raised in the trial court *and* in the appellate court, must indicate how all lower courts ruled on the question, and must provide full record citations.

Remarkably, nothing of the sort appears in the petition with respect to the extraterritorial punishment objection. A review of the record demonstrates that the "pressed or passed on" requirement cannot be met in this case. State Farm nowhere suggests that its belatedly resurrected extraterritoriality objection was passed on by the Utah Supreme Court. It was not.

State Farm did press this objection in its posttrial brief in support of a new trial. But the trial court

decisively held that the objection had by then already been waived and, in any event, was factually and legally without merit.[5] State Farm elected not to challenge this ruling on appeal. It listed no extraterritoriality issue in its briefs and did not even *mention* the trial court's ruling on extraterritoriality, much less argue against it. Nor did it raise the issues of comity, interstate commerce, and repetitive punitive awards alluded to in Pet. 8. Nor did it argue the issue concerning "unlawful conduct in other states" on which it now seeks review. Pet. 13-14.[6]

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[5] Pet. App. 103a-106a. The trial court noted that State Farm made *no extraterritoriality objections of any kind during the trial.* Pet. App. 104a. Instead of candidly confronting that ruling, State Farm works to imply (for the first time ever) that the issue was somehow preserved at the trial level based on its oral argument in a pretrial hearing. Pet. 2-3, 14 n.8; *see also* Pet. App 167a-194a. But the pretrial hearing only serves to highlight State Farm's waiver of the point during the trial. In the hearing, the Campbells argued that State Farm's extraterritoriality concerns should be addressed "with appropriate jury instructions and with how punitives are argued." Pet. App. 188a. The trial court concurred and promised that it would "be mindful of the way in which the issues are presented to the jury." Pet. App. 189a. The trial court, far from simply disregarding State Farm's invocation of *BMW v. Gore*, as the petition misleadingly implies, Pet. 3, specifically encouraged State Farm to rely on the *BMW v. Gore* decision "in any way you wish to do so." Pet. App. 194a. But during trial State Farm simply dropped the point, making no such objections. (Even if this hearing yielded a final ruling, State Farm never appealed from it; its briefs below did not even cite the hearing).

[6] The Utah appellate courts enforce strict requirements for the preservation of issues. The opening brief must: (1) discretely list all issues; (2) set out the applicable standard of review, Utah R. App. P. 24(a)(5); *e.g.*, Pet. App. 73a n.22; and (3) set forth "the contentions and reasons of the appellant with respect to the issues presented" (e.g., here, contentions and reasons why the trial court erred in finding waiver, and in rejecting the extraterritoriality argument on factual and legal grounds). Issues not so presented are waived. Utah R. App. P. 24(a)(9); *e.g., Rackley v. Fairview Care Ctrs., Inc.*, 23 P.3d 1022, 1028 n.4 (Utah 2001); *MacKay v. Hardy*, 973 P.2d 941, 947-49 (Utah 1998). Contrary to these requirements, no extraterritoriality issue was listed in State Farm's statement of the issues. Br. of Appellant 1-3. In its argument, State Farm made no attack on the

For the first time, State Farm argues that the trial court's waiver ruling "was incorrect under Utah procedure." Pet. 14 n.8. This state-law issue falls outside this Court's subject-matter jurisdiction. *E.g., Murdock v. City of Memphis*, 87 U.S. 590, 632-33 (1874).

State Farm also suggests that it "waived its constitutional extraterritoriality argument only with respect to its JNOV/new trial motion." Pet. 14 n.8. But that is the only motion in which it *raised* an extraterritoriality argument. It asserts, without citation to the record, that it made the argument "in its post-trial briefs in support of remittitur." Pet. App. 14 n.8. But in its posttrial motion, the only mention of extraterritoriality came in the fifth of seven grounds listed in support of a new trial; the alternative motion for a remittitur raised no extraterritoriality point. Opp. App. 40a-41a. In its posttrial brief, State Farm argued extraterritoriality only in seeking a complete new trial, Posttrial Mem., *supra* note 3, at 89-97 (Pt. IX-A), and not in its argument in the alternative for a remittitur. *Id.* at 97-112 (Pt. IX-B).

For these reasons, the extraterritoriality objection that is a predicate for the question presented was not preserved below and may not be presented to this Court.

In any event, the petition should be denied on the independent ground that, even at this juncture, State Farm still has not addressed the trial court's analysis showing the extraterritoriality argument to be without merit on this record. For example, State Farm contends

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trial court ruling on this issue. It merely included a three-sentence suggestion that "the constitutional prohibition against extraterritorial punishment announced in *BMW* precludes any effort to justify the $25 million punitive award in this case as punishment for claims practices directed at non-Utah insureds." *Id.* at 72. In response, the Campbells pointed out State Farm's failure to attack the trial court's rulings on State Farm's extraterritoriality argument. Br. of Appellees/Cross-Appellants 37 n.24, 84 n.69; Reply Br. of Appellees/Cross-Appellants 31 n.19. In its reply, State Farm observed that the extraterritoriality issue "hardly seems relevant" to the case. Reply Br. of Appellant 37 n.37. The Utah Supreme Court subsequently declined to address any issue of extraterritorial punishment.

that at trial the Campbells "urged the jury to impose punitive damages on State Farm for its nationwide conduct." Pet. 3-4. The trial court properly rejected this record-specific contention. It held that "the Campbells never requested the jury to use this proceeding to punish State Farm for bad acts occurring outside of Utah," observing that "State Farm's suggestions to the contrary . . . rely on out-of-context quotations to the Campbells' closing argument . . . ." Pet. App. 104a (rejecting arguments in Posttrial Mem., *supra* note 3, at 89-91).

State Farm also contends that the courts below erred in discussing evidence of State Farm's conduct "beyond the borders of Utah." Pet. 10. But under a long line of precedent from this Court, such nationwide evidence may be considered in setting appropriate punishment regardless of whether the specific conduct at issue is lawful or unlawful. Pet. App. 104a-106a. Even now State Farm ignores the ample authority cited to this effect in the trial court's decision. If this Court someday revisits the extraterritoriality issue discussed in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), it should be at the behest of a litigant that has at least addressed the applicable authority, both in the lower courts and in its petition for certiorari.

State Farm's specific complaints of extraterritorial punishment reveal that this case is a singularly ill-suited vehicle for review of any extraterritoriality issue:

1. State Farm asserts that it was punished for age, race and gender discrimination in California and Colorado because two former employees from those states testified about events occurring outside Utah. Pet. 10-11. However, as part of its official policy, State Farm trains its adjusters to stay under their "PP&R" payout caps by targeting those consumers least likely to object or take legal action. See p. 9, *supra*. Such evidence is relevant to the reprehensibility of the PP&R policy that State Farm used to defraud the Campbells as typically vulnerable Utah consumers. There is no basis to suggest that State Farm was punished for discrete actions in California or Colorado.

2. State Farm claims that it was punished for "harassment or intimidation" of a witness "in California [that] had no connection to the present case or indeed to any litigation." Pet. App. 11-12 (citing Pet. App. 19). It discusses its investigation into the sex life of one of its ex-employees from California who testified in this case. Nothing in the record suggests that State Farm was punished by this jury for that investigation. Such evidence was merely admitted to rehabilitate the witness after State Farm, in cross-examination, injected the sex investigation issue into the trial by suggesting that the witness was "mad," and hence biased against State Farm, because of the investigation. *See* Opp. App. 173a-191a.

3. Finally, State Farm asserts that it was punished for a "purported 'nation-wide' practice of underpaying first party claims," and specifically for "first-party claims practices" that it alleges are legal in many states. Pet. 12-13 (citing Pet. App. 6a, 18a, 20a, 37a, 43a). That, too, is false — and is unsupported by the pages in the opinion below cited by State Farm. Only one of the five pages cited (Pet. App. 37a) even mentions State Farm's first-party claim handling. And that page simply summarizes eight areas of evidence that State Farm said were inadmissible under *the Utah law of evidence*; it does not set forth such evidence to support imposing extraterritorial punishment. The Utah Supreme Court held that this evidence was properly considered in the Campbells' rebuttal of State Farm's "honest mistake" defense as proof bearing on the nature of its PP&R policy, of which it "was part and parcel." Pet. App. 39a.

B. Any Objection That the Award Punishes Business Practices "Unrelated and Dissimilar to the Conduct That Gave Rise to the Plaintiffs' Claims" Was Not Preserved Below and Is Not Supported by the Record

State Farm also claims as "constitutional error" that the punitive award punishes "alleged business practices . . . which were unrelated and dissimilar to the conduct by the defendant that gave rise to the plaintiffs' claims."

Pet. i, 15-17. This objection is easily disposed of, rendering the question on which it is built fatally flawed.

State Farm argues it is being punished for "an overarching 'pattern' or 'scheme' of nationwide misconduct," Pet. 15, warning that, if the decision below is left in place, "massive punitive damages" might be awarded whenever a plaintiff "rhetorically" suggests a "generalized 'pattern' or 'scheme' of corporate malfeasance." *Id.* No such theory is involved here. The courts below upheld the punitive damages award as proper punishment in light of *two official policies* used to defraud the Campbells and other Utah consumers. See pp. 6-12, *supra*.

Apart from ignoring the actual basis of the rulings below, State Farm argues that there is a "significant" distinction between third-party and first-party claim handling, such that the evidence of first-party claim handling was improperly considered. Pet. 2 n.1, 16 n.9. However, the trial court held that the evidence "clearly established" that the unlawful PP&R policy "has applied equally to the handling of both third-party and first-party claims." Pet. App. 119a. The record is clear that State Farm insureds victimized by the policy are defrauded of the insurance benefits promised them in the same way regardless of the type of claim being handled, Pet. App. 118a, and that "everything that happened to the Campbells" was a "direct application" and "clear example of how State Farm applies its profit and evasion schemes." Pet. App. 132, 134; *see also* p. 7, *supra*.

Even if State Farm had some basis for its claim that it is being punished for a "pattern" of unrelated conduct, no federal-law objection on this score was pressed or passed on below. There is no mention of it in the Utah Supreme Court's decision. In its appellate briefs below, State Farm presented this concern only as a matter of Utah evidence law. Br. of Appellant 1, 19-38; Br. of Appellees/Cross-Appellants at 37 n.24. In the portion of its briefs addressing punitive damages, State Farm argued only that "Utah precedent" and "sound policy" required ignoring the evidence on the impact of State Farm's PP&R policy on "other Utah insureds." Reply Br. of Appellant 36 (citing Br. of Appellants 72-75). It did not

raise any of the federal-law issues concerning "pattern" evidence identified in Pet. 16-17.

Because State Farm failed to preserve below either of the federal-law objections on which the question presented is predicated, and because those objections are based on a flawed analysis of the record and lack merit in any event, certiorari should be denied.

II. NOTHING IN THE REMAINDER OF THE PETITION IS WORTHY OF REVIEW

Apart from the fatal defects in its question presented, nothing even tangentially raised by the remainder of the petition merits plenary review. The courts below diligently applied this Court's *BMW v. Gore* framework in addressing State Farm's "gross excessiveness" claim. State Farm's arguments that the Utah Supreme Court misapplied *BMW v. Gore* ignore most of the factual findings made below and depend for their plausibility on an incomplete and skewed depiction of the record. There is no reason to grant plenary review.

A. The Utah Supreme Court's Application of the *BMW v. Gore* Guideposts Does Not Merit Review

State Farm makes a factbound argument that the appellate decision below "fundamentally misapplies" the three *BMW v. Gore* guideposts. Pet. 18. Before analyzing the distortions of the record underlying this argument, the Court should note that State Farm has dropped all claims that it was denied a fair trial. See note 3, *supra*.[7]

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[7] It has been widely acknowledged in the context of punitive damages that "if 'fair procedures [are] followed, a judgment that is the product of that process is entitled to a strong presumption of validity.'" *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 586-87 (1996) (Breyer, J., joined by O'Connor and Souter, JJ., concurring) (quoting *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 457 (1993) (plurality opinion)); *see also id.* at 598-99 (Scalia, J., joined by Thomas, J., dissenting).

1. The Reprehensibility Guidepost. The first guidepost set out in *BMW v. Gore* is the level of reprehensibility of the defendant's wrongdoing, which is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." 517 U.S. at 575 & n.23. Recently this Court indicated that trial court findings concerning "the degree or reprehensibility of the defendant's misconduct" appropriately receive deference on appeal unless clearly erroneous. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 121 S. Ct. 1678, 1687-88 & n.14 (2001). Here, the trial court found that the Campbells were victims of two "policies" that constituted a "high-level corporate scheme" to cheat insureds, one conducted through means that are "callous, clandestine, fraudulent, and dishonest," which "implicates virtually all the hallmarks of reprehensibility noted in *Gore* and must be regarded as deeply reprehensible." Pet. App. 136a, 144a-145a.

In its appellate briefs below, State Farm made no effort to show that these findings were clearly erroneous on this record; its theory was that the evidence supporting these findings was legally irrelevant. *See* Br. of Appellant at 71, 78-80; Br. of Appellees/Cross-Appellants 4, 8-12, 84-85; Reply Br. of Appellant 2 n.3, 38-39; Reply Br. of Appellees/Cross-Appellants 6-13, 32-33. The Utah Supreme Court agreed with the trial court's analysis of the reprehensibility guidepost, finding that "State Farm repeatedly and deliberately deceived and cheated its customers via the PP&R scheme," engaging under the PP&R policy "in a widespread pattern of fraud." Pet. App. 18a, 20a; *see also* Pet. App. 29a.

Ignoring these findings, State Farm argues that the courts below erred because, in assessing reprehensibility, they did not limit themselves to sufficiently "similar" past conduct. Pet. 22-23. This is just a rehash of Point II of its petition. In its opening brief below, State Farm devoted only seven sentences to the *BMW v. Gore* reprehensibility guidepost. Br. of Appellant 78. Far from attacking the evidence relied on by the trial court as too "dissimilar" to the evidence about the Campbells, State

Farm actually argued the reprehensibility point on the assumption that its conduct toward the Campbells might be "viewed as part of a broad scheme to reap illicit profits from the handling of insurance claims." *Id.*

State Farm's analysis has severe factual problems as well. For example, State Farm asserts as a supposedly "indisputable" fact that "the Campbell case was the only one in Utah in which the insured faced the possibility of personal liability for the excess verdicts even for a short time." Pet. 23; *see also* Pet. 5-6. But that assertion flies in the face of sworn testimony from State Farm employees that *it keeps no records on excess verdicts in Utah.* State Farm's evasion policy mandates that no such records be kept, to prevent its victims from gathering evidence of wrongdoing and to shield executives from knowledge of wrongdoing. See pp. 10-11, *supra* (citing numerous record sources).

As its principal example of the outrageousness of admitting supposedly "dissimilar" evidence in this case, State Farm argues that "[e]vidence of hurricane coverage in Florida does not shed light on State Farm's handling of the third-party claims in this case." Pet. 24; *see also* Pet. 4. But this and much of the other evidence attacked by State Farm was admitted solely as "rebuttal and impeachment evidence." Opp. App. 4a-5a, 8a-9a, 285a-286a. For example, the Florida hurricane evidence was admitted to impeach one of State Farm's expert character witnesses (see pp. 12-13, *supra*), a Texas insurance regulator who claimed he had recently called Florida regulators, who had no concerns about State Farm. His credibility was attacked with evidence that the top regulator in Florida had just publicly called State Farm a "corporate bully" for canceling hurricane coverage, evidence admitted solely for this limited purpose.[8]

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[8] Opp. App. 319a-320a, 324a-325a. Likewise, the evidence of class action complaints against State Farm, Pet. 4-5, was admitted solely to impeach the credibility of expert witnesses who claimed vast knowledge of State Farm's business practices but had not heard of these complaints. Opp. App. 236a-237a, 302a-307a, 322a-326a,

2. The "Ratio" Guidepost. The next *BMW v. Gore* guidepost is the ratio between the punitive damages and "the actual harm inflicted on the plaintiff." 517 U.S. 580. That ratio is not 145 to 1, as State Farm asserts, but at most 70 to 1.[9] State Farm was willing to see the Campbells lose their home rather than protect them from the excess judgments, so the actual harm would have been higher (and the ratio lower) absent the Campbells' success in mitigating their damages.

In *BMW v. Gore* this Court eschewed any "categorical approach" to the ratio guidepost, rejecting "the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award." *Id.* at 582. Thus, the 500-to-1 ratio in that case did not automatically invalidate the $2 million punitive award, although it did indicate a need for close scrutiny of the award. *Id.* at 582-83. *See also TXO*, 509 U.S. at 459-62 (upholding 526-to-1 ratio (not a 10-to-1 ratio, Pet. 18 n.10) between punitive and compensatory damages); *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 7 n.2, 23 (1991) (upholding 200-to-1 ratio between punitive

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376a-384a, 392a-398a. Similarly, the evidence of one of the State Farm companies' evaluation of "earthquake damage to its insureds' houses in California," Pet. 4, was admitted solely to rehabilitate a witness's credibility after State Farm elected to delve into such evidence. Opp. App. 8a, 11a, 171a, 173a-191a, 240a, 370a-375a.

[9] State Farm counts as "actual harm" only the $1 million in general damages recovered by Curtis and Inez Campbell. To this must be added their $2,086.75 in special damages, Pet. App. 100a; the $264,287 excess verdict against Curtis Campbell, Pet. App. 144a (which would have been included in the special damages had State Farm not paid this amount just before Campbell sued); and the $400,834.70 in attorneys' fees and $400,747.78 in expenses that the Campbells owe for recovering their compensatory damages. Pet. App. 7a, 67a-76a. (Attorneys' fees and expenses were recognized as part of compensatory damages in calculating the relevant ratio in *TXO*. *See* 509 U.S. at 446, 451, 453 (plurality opinion).) The total dollar amount of actual harm on this record is therefore $2,067,956.23, producing a ratio of punitive damages to actual harm of 70.1 to 1.

damages and "hard," out-of-pocket expenses). Applying the ratio guidepost of *BMW v. Gore*, some lower courts have permitted conspicuously high ratios while others have not, depending on the facts of each case. *E.g., Lee v. Edwards*, 101 F.3d 805, 807 (2d Cir. 1996) (upholding 75,000-to-1 ratio); *Southeastern Sec. Ins. Co. v. Hotle*, 473 S.E.2d 256, 260-61 (Ga. App. 1996) (upholding 45,000-to-1 ratio); *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 148 (Iowa 1996) (upholding 500-to-1 ratio), *cert. denied*, 522 U.S. 810 (1997); *Inter Medical Supplies, Ltd. v. EBI Medical Systems, Inc.*, 181 F.3d 446, 450, 463, 468-69 (3d Cir. 1999) (invalidating $50 million punitive award bearing 1-to-1 ratio to actual damages), *cert. denied*, 528 U.S. 1076 (2000). *See also* Pet. App. 32a-34a.

State Farm urges review of the Utah Supreme Court's application of the "ratio" guidepost based on several highly factbound arguments. It argues that the court's analysis "was skewed" by its consideration of the evidence admitted in the Phase II "institutional" case, concerning facts supposedly not "relevant to the Campbells." Pet. 19. But the whole point of the Phase II evidence, under *State Farm's own bifurcation plan*, was to determine what about State Farm's policies and practices actually caused the harm to the Campbells, evidence highly relevant to the matter of punitive damages. See p. 19-21, *supra*. This trial featured ample direct evidence that the Campbells were the victims of a fraudulent, nationwide official corporate policy orchestrated by high-level officers — vastly stronger evidence than the pattern evidence found sufficient by this Court in *TXO* to uphold an award bearing a 526-to-1 ratio.[10]

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[10] In *TXO*, the defendant (like State Farm here) claimed that its employees had simply made an isolated, "good faith" mistake when, acting upon the advice of counsel, they perceived a possible cloud on their lessors' title and filed a quit-claim deed with what the jury ultimately determined was a reckless disregard for its truth or falsity. Reply Brief of Petitioner at 6-8. The plaintiffs contended that TXO's actions were part of an effort to defraud and extort them out of their property interest, which they alleged was itself part of a nationwide

State Farm argues that the court below was wrong in concluding that the injury to the Campbells was hard to detect, and the monetary value of the noneconomic harm was difficult to determine. Pet. 20-21. Evaluating the anguish the Campbells suffered *was* inherently difficult. The court below questioned whether, given the "subjective standard" for general damages, the trial court should have reduced the jury's verdict. Pet. App. 64a. Campbell testified that "I wouldn't sell for any amount of money what this stress has caused me." Opp. App. 79a. And although the excess verdict itself was not hard to detect, the *wrongful injury* to the Campbells — the fraud perpetrated on them pursuant to the PP&R scheme — was difficult to detect in light of State Farm's elaborate efforts to evade punishment. See pp. 9-12, *supra*.

In concluding that the ratio in this case is acceptable, the Utah Supreme Court relied partly on the evidence of the "wall" between the regional offices and headquarters on the subject of punitive damages. This wall is so high that a previous $100 million punitive damages award in Texas was not big enough for head-

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pattern and practice by TXO to cheat business partners out of money. Brief of Respondents at 2-14. Quite unlike this case, the plaintiffs in *TXO* had no internal documents proving an unlawful official company policy. They called no past or present employees on the operation of such a policy. They had no testimony from experts who had read thousands of pages of documents relating to the policy. They simply called four attorneys who knew of past complaints of cheating by TXO, and who gave examples of how TXO had cheated other people in other states, in ways quite dissimilar from the underlying events in West Virginia. *See* Reply Brief of Petitioner at 8-9 & n.17; *see also* Brief of Respondents at 12-14. This Court found such evidence sufficient to prove that TXO had a nationwide pattern of wrongdoing that justified upholding the entire punitive award. *See* 509 U.S. at 462 (plurality opinion) (finding "that the scheme employed in this case was part of a larger pattern of fraud, trickery and deceit"); *id.* at 469 (Kennedy, J., concurring in part and concurring in the judgment) (noting evidence that "this was not an isolated incident on TXO's part," but instead "part of a pattern and practice by TXO to defraud and coerce those in positions of unequal bargaining power.") (quoting lower court opinion).

quarters to be told of it. Pet. App. 30a, 34a. State Farm's remarks about the specifics of that case, and the fact that it was ultimately settled, Pet. 5, 21, ignore the point of this evidence. The jury in this case could reasonably set its punitive damages award so as to attract the notice of headquarters and induce top executives to halt the official policies under which Utah consumers were being victimized — especially after Moskalski testified that he felt no duty to report any punitive damages award to headquarters. See pp. 10-11, *supra*.

As its final "ratio" argument, State Farm seeks to draw this Court into second-guessing the trial judge's credibility findings. It cites as an "indisputable fact" that, following the excess verdict entered against Campbell in 1983, no other Utah policyholder has ever been "exposed to personal liability on an excess verdict" following an offer to settle for the policy limit. Pet. 21. But according to sworn testimony from its employees, State Farm keeps no records on this subject. See pp. 10-11, *supra*. State Farm attacks the court below for refusing "to give weight to" Moskalski's testimony that it had just adopted a policy of informing insureds in advance of any trial that it would pay any excess verdict (so-called "peace of mind" letters). Pet. 21-22; *see also* Opp. App. 265a-266a, 275a-276a, 288a-291a. (This asserted policy change was *not* "nationwide," Pet. 21, but only local. Opp. App. 290a-291a.) The Utah Supreme Court was not required to believe this testimony, which the trial court found "self-serving," "implausible," and supported by no "credible evidence." Pet. App. 141a-142a. This Court should not grant review of a petition asking it to reverse a state appellate court for deferring to such a credibility finding.

3. The "Comparable Penalties" Guidepost. The final *BMW v. Gore* guidepost involves a comparison between "the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct." 517 U.S. at 583. In this case, the trial court ruled that this guideline did not call for reduction of the jury's $145 million award, concluding that "[t]he penalties that could be imposed under Utah law for the

fraudulent scheme that has been pursued by State Farm are enormous," Pet. App. 145a, especially given "the evidence of State Farm's broad pattern of consumer fraud in Utah." Pet. App. 145a-146a.

On appeal, State Farm argued that the trial court's "comparable misconduct" analysis was flawed because there was no evidence of a fraudulent scheme against Utah consumers. Br. of Appellant 80-84. The Utah Supreme Court properly rejected this contention. Pet. App. 35a-36a. State Farm reprises the argument in this Court, Pet. 25-26, but this factbound argument does not merit review. State Farm's new argument that the trial court misread Utah law, and that the Utah Supreme Court thereby erred in adopting the trial court's analysis of Utah law, *see* Pet. 26-27 (citing Pet. App. 35a (citing Pet. App. 145a-146a)), involves only state-law issues, and ones not preserved below, at that. It is also contrary to the testimony elicited by State Farm from a Utah insurance regulator who stated that under Utah law "forfeitures can be astronomical," and that the authority of regulators includes the option of "seizing the company and liquidating it." Opp. App. 353a-355a.

B. The Utah Supreme Court's Consideration of State Farm's Wealth Does Not Merit Review

Finally, State Farm asks this Court to grant review "to clarify to what extent, if any, a national corporation's wealth should be a factor" in setting punitive damages. Pet. 28. No such question is posed by this case. As the trial court ruled, State Farm did not raise this argument until after the jury rendered the verdict; indeed, its own proposed jury instruction listed "[t]he relative wealth of State Farm" as a factor for the jury to consider. Pet. App. 109a-110a. Further, State Farm's concern regarding consideration of wealth "earned by business activities outside of Utah," Pet. 29, was never raised below, even on appeal. *See* Br. of Appellant 88-89 & n.61.

In any event, this Court has repeatedly stated that the size of a punitive damages award may be justified as constitutionally reasonable by reference to a defendant's

wealth. *TXO*, 509 U.S. at 462 n.28 (plurality opinion); *BMW v. Gore*, 517 U.S. at 591 (Breyer, J., joined by O'Connor and Souter, JJ., concurring); *Haslip*, 499 U.S. at 21-22; *Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 300 (1989) (O'Connor, J., joined by Stevens, J., concurring in part and dissenting in part). The courts below considered wealth as only one factor in reviewing the punitive damages award, *see* Pet. App. 15a-17a, 111a-113a, and can hardly be faulted for doing so.

• • •

At bottom, this case is about a trial strategy gone sour. In Phase I — a trial sanitized of nearly all evidence of motive by virtue of State Farm's successful bifurcation effort — State Farm failed to convince a jury that it had dealt with the Campbells in good faith. In the Phase II trial, State Farm could have admitted *why* it did what the jury had already found it did to the Campbells. Instead, it chose to reargue its innocence, forcing the Campbells to prove that it was a longstanding, far-reaching, and unlawful corporate policy that placed them "in the jaws of financial ruin." Opp. App. 33a.

State Farm made several fateful decisions in Phase II that this Court would have to overlook for certiorari to be providently granted. It could have objected on federal-law grounds to evidence of how its unlawful PP&R policy and its efforts to evade detection and punishment operated outside Utah. It did not. It could have accepted the trial court's invitation (see note 5, *supra*) to craft jury instructions going further than those given at trial to eliminate any risk of the jury punishing it for allegedly dissimilar misconduct, for out-of-state conduct, or for conduct lawful where it occurred. It did not. It elected to risk basing its defense on the theory that what it did to the Campbells was just an "honest mistake" in no way connected to the PP&R policy (which it said had been ended anyway, even though nothing had been wrong with it), so that the jury should simply ignore all the Phase II evidence about that scheme. This strategy of total denial hinged on the jury crediting what proved to be "implausible" testimony from State Farm employees, Pet.

App. 142a, and expert testimony that "was extremely open to question." Pet. App. 159a.

State Farm lost its high-risk gamble when the jury reached a conclusion, sustained by the courts below, that State Farm's misconduct, far from being an honest mistake, was a typical instance of an ongoing unlawful corporate policy that applied equally to first- and third-party claims, that had *not* been phased out, and that had been covered up through State Farm's massive shredding of incriminating documents requested in discovery.

State Farm asks this Court for another chance to object where it did not object below, to argue what it did not argue below, and to deny once more that its treatment of the Campbells reflected an official corporate policy that ample evidence showed would persist unless punished by an award large enough to awaken corporate headquarters. It is evident from the factbound character of the petition that if certiorari were granted, State Farm would use this Court's jurisdiction to conduct a veritable "Phase III" retrial on a 27,000-page record. This Court's finite resources have wisely been devoted to tasks more productive than entertaining the belated lament of an unsuccessful litigant.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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March 29, 2002

OPPOSITION APPENDIX CONTENTS

PRETRIAL ORDERS **PAGE:**

Order Denying Various Motions of State Farm to Exclude Plaintiffs' Evidence (R. 6626-33) 1a

Order Regarding Evidence of Other Cases (R. 6593-96) 7a

Order Regarding Exclusion of Testimony of Ina DeLong (R. 6591-92) 10a

Order filed May 28, 1996 (R. 6571-79) 12a

Order Regarding Evidence of Spoliation of Evidence (R. 6608-16) 19a

POSTTRIAL ORDERS

Order Denying Defendant's Motion for New Trial Based on the Court's Failure to Trifurcate the Trial (R. 10105-07) 25a

Order Denying State Farm's Motions for Judgment NOV and New Trial Regarding Intentional Infliction of Emotional Distress (R. 10117-21) 28a

Order Regarding State Farm's Motion for a New Trial or Remittitur Regarding the Compensatory Damage Awards (R. 10093-99) 32a

POSTTRIAL MOTIONS

Motions for Judgment Notwithstanding the Verdict, for New Trial or Remittitur filed August 19, 1996 (R. 7758-63) 38a

TRIAL TRANSCRIPT **PAGE:**

Vol. R. 10259 (June 7, 1996) 42a
Vol. R. 10260 (June 11, 1996) 47a
Vol. R. 10261 (June 12, 1996) 56a
Vol. R. 10262 (June 13, 1996) 64a
Vol. R. 10263 (June 14, 1996) 72a
Vol. R. 10264 (June 18, 1996) 80a
Vol. R. 10265 (June 19, 1996) 91a
Vol. R. 10266 (June 20, 1996) 108a
Vol. R. 10267 (June 21, 1996) 134a
Vol. R. 10268 (June 25, 1996) 159a
Vol. R. 10269 (June 26, 1996) 161a
Vol. R. 10270 (June 27, 1996) 192a
Vol. R. 10271 (June 28, 1996) 203a
Vol. R. 10272 (July 2, 1996) 213a
Vol. R. 10273 (July 3, 1996) 236a
Vol. R. 10274 (July 5, 1996) 248a
Vol. R. 10275 (July 9, 1996) 255a
Vol. R. 10276 (July 10, 1996) 262a
Vol. R. 10277 (July 11, 1996) 288a
Vol. R. 10278 (July 12, 1996) 294a
Vol. R. 10279 (July 16, 1996) 301a
Vol. R. 10280 (July 17, 1996) 314a
Vol. R. 10281 (July 18, 1996) 337a
Vol. R. 10282 (July 19, 1996) 353a
Vol. R. 10283 (July 23, 1996) 360a
Vol. R. 10284 (July 25, 1996) 365a
Vol. R. 10285 (July 26, 1996) 376a

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IN THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL, Plaintiffs, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.	**ORDER DENYING VARIOUS MOTIONS OF STATE FARM TO EXCLUDE PLAINTIFFS' EVIDENCE** Civil No. 890905231 Judge William B. Bohling

On the 17th day of May, 1996, the following motions came regularly before the court:

1. State Farm's Motion for Consolidated Pretrial Hearing To Determine the Admissibility of "Other Acts" Evidence (Utah Rules of Civil Procedure 16(b); Utah Rules of Evidence 104);

2. State Farm's Motion in Limine For an Order Excluding Evidence of Other Alleged Improper Claims, Policies, Procedures and Practices;

3. State Farm's Motion in Limine for an Order Excluding Pattern and Practice Evidence;

4. State Farm's Motion in Limine to Exclude Evidence of Non Third Party BI Claims Handling Practice and/or Procedures;

5. State Farm's Motion in Limine to Exclude Evidence of Non-Utah PP&Rs; and

6. State Farm's Motion in Limine to Exclude Evidence from Plaintiffs' Witnesses Delong, Prater and Fye Regarding State Farm's Pattern and Practices.

Plaintiffs were represented by their counsel L. Rich Humpherys and Roger P. Christensen; Defendant was represented by its counsel Glenn C. Hanni, Paul M. Belnap and Stuart H. Schultz.

In ruling upon the above motions, the court finds as follows:

1. The court has already held numerous hearings to consider evidentiary issues including spending most of four days in the past week. It is not feasible or necessary to hold more evidentiary hearing before the start of trial, which is scheduled for June 4.

2. The court generally finds that in cases of fraud, intentional infliction of emotional distress and punitive damages, there needs to be considerable latitude to prove intent, reckless disregard, absence of mistake, plan, outrageous conduct, and other elements of these claims. The court finds generally that wrongful and illegal practices, procedures, policies and other improper claims handling procedures (hereinafter referred to as "Wrongful Pattern and Practice" evidence) are relevant to the issues in the second trial.

3. The court finds that the wrongful pattern and practice evidence is directly relevant and necessary for plaintiffs to address the issues of punitive damages i.e. whether State Farm acted willfully and maliciously, or with conduct manifesting a knowing and reckless indifference toward and disregard of the rights of the Campbells. Regarding the evidentiary considerations in awarding punitive damages, the fact finder and the trial court must consider evidence such as the effect State Farm's wrongful conduct has had on the Campbells and others, and how reprehensible or egregious is the State Farm conduct, including how extensive and repetitive it has been and its duration. Under the policy behind punitive damages, the award must punish and deter similar conduct. The court finds that Wrongful Pattern

and Practice evidence is relevant to plaintiffs' claims.

4. In establishing the alleged fraud, plaintiffs must prove each element of fraud including intent or reckless indifference toward the truth of misrepresentations. Plaintiffs must also rebut defendant's assertion that State Farm's actions toward the Campbells were inadvertent errors or mistakes in judgment. The court finds that the Wrongful Pattern and Practice evidence is relevant and probative to these and related issues regarding fraud.

5. Regarding plaintiffs' claim of intentional infliction of emotional distress, plaintiffs must prove that State Farm's actions were "outrageous conduct" and the intent to cause emotional distress or reckless disregard of the emotional distress. Evidence of plans, patterns, motives, lack of mistake and related evidence should properly be considered. The court finds that the wrongful pattern and practice evidence is relevant.

6. State Farm has raised various defenses such as the fact that Campbell consented to the trial of the underlying case, that State Farm relied in good faith on Wendell Bennett's opinions. The court finds that the Wrongful Pattern and Practice evidence directly bears on plaintiffs' rebuttal to these defenses.

7. Through various pleadings and hearings, State Farm has established that it has a practice to destroy all copies of outdated documents, including manuals and other claims handling policies and therefore cannot produce some of the relevant documentation during the time period in question. Given the amount of time which has expired since the handling of the Campbell file and the destruction of these documents, plaintiff[s] have been hindered in their ability to discover needed evidence to establish their claims. Plaintiffs have been required to rely to a significant degree upon the oral testimony and memories of various witnesses. The court finds therefore that the Wrongful Pattern and Practice Evidence is helpful to overcome the disadvantage of destroyed evidence and plaintiff[s] would be prejudiced to exclude such evidence.

8. Acting upon State Farm's motion, this case was bifurcated, and plaintiffs' evidence in the first trial was substantially limited. Though the Wrongful Pattern and Practice Evidence was relevant to plaintiffs' claims of bad faith under Rule 402, Utah Rules of Evidence, at State Farm's request the court excluded the evidence with the expectation that it would be considered in the second trial. This was the primary reason for bifurcating this case for trial. Even with this restriction of evidence (which primarily benefitted State Farm), the jury in the first trial found against State Farm on all questions on the verdict. In light of this verdict, the court finds that the pattern and practice evidence is of high probative value and importance to plaintiffs' claims, and that serious prejudice to plaintiffs would result if such evidence were excluded. The court further finds that the probative value is not outweighed by the danger of unfair prejudice or confusion.

9. The court acknowledges that on any specific item of evidence that may fall into the general category of Wrongful Pattern and Practice, there may be an issue under Rule 403 to exclude the specific evidence. The court finds that it is improper, however, to exclude specific items by addressing the general issues of wrongful pattern and practice evidence. Therefore, the court will consider a motion under Rule 403 of a specific item of evidence, consistent with the above findings.

10. The court finds that there may be some issues of claims handling by the State Farm Insurance companies that may be so distant in its relationship to the issues in this case, that it should be excluded. The court therefore (except as otherwise specifically ordered) limits the scope of the Wrongful Pattern and Practice Evidence to claims, policies, procedures and practices of State Farm Mutual Automobile Insurance Company except for medical insurance claims, that pertain to automobile insurance policies. Evidence of claims, policies, procedures and practices that pertain to State Farm Fire & Casualty Company, may also be relevant as long as they have sufficient relationship to automobile insurance claims or the claims handling policies and

procedures of State Farm Mutual Automobile Insurance Company. The court finds that this limitation on the scope of this evidence (while it is narrower than plaintiffs' claim is justified by the record before the court) limits the pattern and practice evidence to that evidence which is sufficiently similar and linked to the conduct at issue in this case that it properly should be considered as part of the alleged common overall schemes.

10. The court is further persuaded and bases this order upon the points and authorities set forth in plaintiffs' General Memorandum in Opposition to Defendant's Pending Motions in Limine.

11. This order is part of a large number of orders which the court has entered dealing with evidentiary issues in this case. It is part of a careful effort by the court to exercise its discretion in balancing the interests of the parties and to provide an overall approach to the trial of the matter which is fair and equitable. Consequently it must be considered in light of all the other evidentiary and discretionary rulings in this case.

Based upon the above findings and the very extensive record in this case, the court denies said motions.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following motions are denied:

1. State Farm's Motion for Consolidated Pretrial Hearing To Determine the Admissibility of "Other Acts" Evidence (Utah Rules of Civil Procedure 16(b); Utah Rules of Evidence 104);

2. State Farm's Motion in Limine For an Order Excluding Evidence of Other Alleged Improper Claims, Policies, Procedures and Practices;

3. State Farm's Motion in Limine for an Order Excluding Pattern and Practice Evidence;

4. State Farm's Motion in Limine to Exclude Evidence of Non Third Party BI Claims Handling Practice and/or Procedures;

5. State Farm's Motion in Limine to Exclude Evidence of Non-Utah PP&Rs; and

6. State Farm's Motion in Limine to Exclude All Evidence from Plaintiffs' Witnesses Delong, Prater and

Fye Regarding State Farm's Pattern and Practices.

The court (except as otherwise specifically ordered) limits the scope of the Wrongful Pattern and Practice Evidence to claims, policies, procedures and practices of State Farm Mutual Automobile Insurance Company except for medical insurance claims, that pertain to automobile insurance policies. Evidence of claims, policies, procedures and practices that pertain to State Farm Fire & Casualty Company, may also be relevant as long as they have sufficient relationship to automobile insurance claims or the claims handling policies and procedures of State Farm Mutual Automobile Insurance Company.

The court will consider appropriate motions by defendant to exclude a specific item of evidence under Rule 403, Utah Rules of Evidence.

DATED this 28 day of May, 1996.

BY THE COURT
/s/
William B. Bohling
District Judge

FILED May 28, 1996

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IN THE DISTRICT COURT OF THE
THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE, STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	:	**ORDER REGARDING EVIDENCE OF OTHER CASES**
Plaintiffs,	:	
vs.	:	Civil No. 890905231
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	:	Hon. William B. Bohling
Defendant.	:	

Defendant filed a Motion in Limine to Exclude Evidence of other cases, along with a supporting memorandum. A hearing was conducted with respect to such Motion on May 17, 1996. Roger P. Christensen and L. Rich Humpherys appeared on behalf of plaintiffs and Glenn C. Hanni, Paul M. Belnap and Stuart H. Schultz appeared on behalf of Defendant. The court having heard the arguments of counsel, there having been some discussion between counsel and the court, the court having considered the issues raised by this motion in light of and in conjunction with numerous other evidentiary motions, and based on the extensive record in this case including numerous hearings, the trial of the first phase of this case, the numerous depositions and pleadings in this case and the other matters before the

court, hereby issues its ruling as follows:

1. Plaintiffs will be limited in presenting evidence in their case in chief of other lawsuits to lawsuits involving automobile claims, (either third party or first party). These can include lawsuits relating to automobile claims either handled by State Farm Auto or lawsuits relating to automobile claims where State Farm Fire wrote the automobile policy. The court will also allow evidence of cases where plaintiffs have shown adequate linkage to the auto company.

2. The foregoing restriction does not apply to rebuttal and impeachment evidence. The court finds that because State Farm contends that it does not keep records of bad faith verdicts, punitive damage verdicts, excess verdicts against its insureds and other similar information, that plaintiffs have been limited in their efforts to obtain such information. Plaintiffs have obtained limited information from the Westlaw data bank concerning approximately 75 trial court decisions which plaintiffs contend represent judicial rulings of misconduct on the part of State Farm, which cases have been disclosed to defendant. Plaintiffs have also disclosed approximately 30 appellate decisions which plaintiffs contend show judicial determinations of misconduct on the part of State Farm. Plaintiffs have indicated that they also have evidence of class actions and RICO actions against State Farm.

3. At the hearing, counsel for plaintiffs advised the court that with the very extensive discovery which has been done in this case, some of the cases specifically listed may have been the subject of testimony in depositions taken in this case. To the extent that is true, the plaintiffs stated that they may raise such cases in their case in chief. However, unless the listed cases have been the subject of deposition testimony, plaintiffs do not plan to discuss them in their case in chief, but inten[d] to use them for impeachment and rebuttal. Accordingly, it is the Order of this Court that the use of the listed cases will be limited to impeachment and rebuttal, except where such cases have been the subject of deposition testimony. In the event the court will

consider the admissibility of such evidence as it comes up during the trial.

4. State Farm has access to much more information concerning the cases listed by plaintiffs than do plaintiffs.

5. State Farm has designated a number of fact witnesses who deny that State Farm engages in unfair conduct towards its insureds and who largely disclaim knowledge or awareness of bad faith verdicts, punitive damage verdicts, or excess verdicts against State Farm.

6. State Farm has also designated five present and former insurance regulators as witnesses. Three have been designated as expert witnesses. Such insurance regulator expert witnesses will give opinions that State Farm does not engage in unfair conduct towards its insureds with such opinions being based in large part on the regulators[']' alleged lack of awareness of claims by persons insured by State Farm that they have been treated unfairly. Plaintiffs contend that for the most part such regulators have denied knowledge of bad faith verdicts, punitive damage verdicts, excess verdicts, class actions against State Farm, RICO actions or the similar information.

7. In light of such evidence, the court deems it appropriate to allow evidence of the other cases designated by plaintiff[s] by way of impeachment and rebuttal.

8. State Farm has indicated that with its superior access [to] information concerning such cases, it has determined that some of those listed by plaintiffs have been reversed on appeal while others were not in fact rulings of misconduct by State Farm. The court desires to avoid wasting time by having plaintiffs, acting on erroneous information, raise cases indicating misconduct by State Farm, which in fact do not. Accordingly, defendant is required, to the extent it has information indicating that plaintiffs[']' information regarding such cases is erroneous, to provide it to plaintiffs.

Dated this 28 day of May, 1996.

/s/
Honorable William B. Bohling
District Judge

FILED May 28, 1996

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IN THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	:	**ORDER REGARDING EXCLUSION OF TESTIMONY OF INA DeLONG**
Plaintiffs,	:	
vs.	:	Civil No. 890905231
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	:	Hon. William B. Bohling
Defendant.	:	

Defendant's Motion in Limine to Exclude Ina DeLong's Testimony came on for hearing before the court on May 17, 1996. Defendant was represented by Glenn C. Hanni, Paul M. Belnap and Stuart H. Schultz, and plaintiffs were represented by L. Rich Humpherys and Roger P. Christensen.

At the hearing, defendant's request for the court to sign a commission allowing defendant to obtain a California document subpoena to subpoena documents in the possession of Ina DeLong was also considered.

After considering the written memorandum submitted by defendant, after hearing the arguments of counsel and discussion between counsel and the court,

the court hereby rules as follows:

1. Inasmuch as it is anticipated that Ina DeLong will be asked to give opinions and inasmuch as defendant requested production of Ms. DeLong's documents well before the discovery cut off, the court will sign a commission to enable defendant to subpoena documents from Ms. DeLong.

2. Defendant's motion in limine is granted in part and denied in part. Ms. DeLong will be allowed to testify, but will not be allowed to give testimony which has no relationship to the auto company. In order for her to give testimony concerning defendant's policies, practices and related matters, proper foundation will need to be laid such as that she know what the practices and policies are of the auto company or that the practices and policies that she is familiar with at the fire company are the same as the subject practices and policies of the auto company.

For the reasons set forth in the court's Order Denying the Various Motions of State Farm to Exclude Plaintiffs' Evidence, the court does not deem it appropriate to issue an order in limine completely excluding Ms. DeLong from testifying. However, as noted above, proper foundation will need to be laid and her testimony will also be subject to the limitations and guidelines the court has set forth the aforesaid order.

DATED this 28 day of May, 1996.

BY THE COURT

/s/

Honorable William B. Bohling,
District Judge

FILED May 28, 1996

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IN THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	:	**ORDER**
Plaintiffs, vs.	:	Civil No. 890905231
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	:	Hon. William B. Bohling
Defendant.	:	

Defendant's Motion in Limine (dated May 9, 1996) to Exclude Evidence Regarding the Excess Liability Handbook came on for hearing before the Court on May 20, 1996. The motion, at defendant's request, was also reheard on May 21, 1996. Paul Belnap, Glenn Hanni and Stuart Schultz were present at both hearings on behalf of defendant, and Roger P. Christensen and L. Rich Humpherys appeared on behalf of plaintiffs at both hearings.

In State Farm's written and oral arguments it contended that the Excess Liability Handbook ("The Handbook") should be excluded, "because the Campbells cannot show relevance or proper foundation." (Defendant's Memorandum in support of its motion, p. 2.) Defendant also argued that the Handbook should be

excluded under Rule 403 Utah Rules of Evidence.

The Court having considered the written memoranda filed by the parties in this case, the oral arguments of counsel, the evidence presented at the Rule 104(a) hearing heretofore held in this case on October 27, 1995 ("The 104(a) hearing"), the depositions, exhibits, the record from the bifurcated trial, and the extensive additional record in this case, and being fully advised, hereby finds and rules as follows:

Because of the mass of evidence and information in the record in this case, it is not feasible to set forth in this order all of the evidence supporting the Court's ruling. However, while not intending to provide an exhaustive recitation of findings supporting the Court's ruling, the following are provided by way of explanation and illustration:

1. During the trial last October defendant produced three identical copies of the Excess Liability Handbook. One copy was provided to the Court for its use, one copy was provided to plaintiffs' counsel for their use, and the third copy was marked as Exhibit 21 at the Rule 104(a) hearing in this case. Defendant has admitted the authenticity of Exhibit 21, but contends that it was used exclusively by State Farm Fire and Casualty Company ("State Farm Fire"), defendant's wholly owned subsidiary.

2. There is substantial evidence offered by both sides indicating that defendant has destroyed, discarded or otherwise eliminated manuals, handbooks, claim school records, records of claims conferences, training materials, claims handling memos and guidelines, and other documents which would otherwise be subject to discovery in this case. The lack of such information is a factor which the court determines may properly be considered in deciding the admissibility of handbooks, manuals and other materials which still remain in existence.

3. There is a substantial amount of evidence in the record in this case indicating an overlap in the claims handling functions of State Farm Fire and State Farm Auto. For example, it is undisputed that during the entire period in question State Farm Auto has handled

the automobile claims generated by auto policies written by State Farm Fire, which handles no auto claims. There are numerous references to auto claims in the Handbook. Also, claims handling at State Farm Fire and State Farm Auto share common management at various levels in the two companies. In some instances the Division Claims Superintendent of State Farm Auto also has management responsibility over claims for State Farm Fire within the same division. The Handbook states as its purpose: "to provide education, training and assistance to *Divisional Claims Superintendents* . . . with regard to the handling of excess liability claims." (Part III, page 1.) The Campbell case is an excess liability case.

4. There is evidence in the language of the Handbook suggesting that the Handbook applied to handling of excess liability auto claims for both State Farm Fire and Auto.

5. The evidence in the record in this case indicates that until 1970, State Farm Fire did not have its own claims department, but its claims were handled by a combination of the use of State Farm Auto claims department and independent adjusters. In 1970, State Farm Fire began developing its own claims department. Management for the State Farm Fire claims department mainly came from claims personnel from State Farm Auto. R. E. Aaberg was made the head of the new claims department at State Farm Fire. At the time of that appointment he was in upper management with the claims department of State Farm Auto, where he had many years of experience. Mr. Aaberg's name appears on the face sheet of the Excess Liability Handbook.

6. In the Excess Liability Handbook itself are many references to auto claims and auto claims handling. At least part of the materials appear to have been prepared by Ross G. Hume, who is identified in the manual as senior claim counsel for State Farm Auto.

7. Part V of the Excess Liability Handbook is strikingly similar to the June 1983 version of Article 14 of the State Farm Auto Claims Superintendent's Manual. There is ample evidence from which a jury could

reasonably conclude that Part V of the Excess Liability Handbook was patterned after earlier versions of Article 14 of the Auto Manual, which are no longer available. The earliest version of Article 14 produced by defendant in this case is a 1983 version. A version of Article 14 dated in October of 1981 is contained in documents in the possession of plaintiffs' expert, Gary Fye. Accordingly, the version of Article 14 which was in force on the date of the accident in question in May of 1981 is not available.

8. The court deems this significant for a number of reasons. For example, a number of witnesses proffered by plaintiffs in this case claim that State Farm instructed defense counsel in excess exposure cases not to put certain types of information in writing, such as the attorney's opinion as to case value or his estimate as to the amount of the potential verdict. While State Farm denies such instructions were given, they are set forth on pages 9 and 12 of Part V of the Excess Liability Handbook, but are not found in the available version of Article 14.

9. The Excess Liability Handbook contains other information corroborative of plaintiffs' evidence and contradicting defendant's evidence. For example, page 4 of Part III has a section entitled, "Self-Serving Correspondence." Several of plaintiffs' witnesses have testified that it is common practice to distort claims files at State Farm by the use of untrue, self-serving documents. The State Farm adjuster assigned to the Campbell case has testified that this was done in the Campbell case file. Defendant's witnesses have denied both the practice of preparing self-serving documents and that self-serving documents were placed in the Campbell claims file.

10. Part IV, page 7, includes an analysis of the financial impact on State Farm of 222 "excess claims" and boasts of how well the company has fared on such claims. Defendant denies that it does such analysis or keeps records of such claims.

11. Defendant contends that the Excess Liability Handbook was made obsolete by a memorandum dated

February 8, 1979. Plaintiffs challenge the authenticity of this memorandum in light of defendant's failure to produce this document until very recently, and repeated denials that it has kept documents of this nature from this time frame. It is an eight-page document addressed to regional vice-presidents with the subject "Educational Material." Regional vice presidents are over both State Farm Auto and State Farm Fire. The language on which defendant relies is found on the second to the last page and there is nothing about the way the document is written or structured which would call any particular attention to that language.

12. Defendant also produced a one-page memo with the subject "Educational Materials" dated May 20, 1986 which is addressed to regional vice-presidents, repeating the instruction that a number of materials were obsolete, including the Excess Liability Handbook. Plaintiffs also challenge the authenticity of this memo for the same reasons.

13. Even if a jury concludes that the '79 and '86 memos proffered by defendant are authentic, a jury could also reasonably conclude that the 1979 memo was not effective in communicating the discontinuance of the Handbook and that the 1986 memo is evidence that there was continued use of the Excess Liability Handbook at least up to May 20, 1986. The accident in question occurred in May of 1981 and State Farm's investigation, handling and defense of the matter occurred between May of 1981 and September of 1983 when the case was tried. There was an appeal thereafter.

14. At the 104(a) hearing held in this matter on October 27, 1995, the Excess Liability Handbook was treated at some length by several witnesses. Mr. John Crowe testified that he was employed from 1965 to 1990 at either State Farm Auto, State Farm Fire or both. He became a claims superintendent for State Farm Fire in 1979. Mr. Crowe, as an employee of State Farm Auto, served as the Divisional Claim Superintendent for both State Farm Auto and State Farm Fire for the Northern Utah Division in 1987. (Crowe Deposition, p. 5.) He

testified that he received a copy of the Excess Liability Handbook in the ordinary course of his duties as a claims superintendent in 1979 or 1980. He further testified that it accurately reflected the instructions that both State Farm Auto and State Farm Fire gave their claims handling personnel in 1981 to 1983 time frame for dealing with excess liability claims. Crowe, as divisional claims superintendent for both State Farm Auto and Fire in Northern Utah, also at one point had some responsibilities relating to the Campbells case.

15. Mr. Ray Summers (the State Farm Auto adjuster assigned to the Campbell case), was employed by State Farm Auto for 19 years, up until the latter part of 1982. He had extensive experience in both fire and auto claims, and testified that the instructions, guidelines and recommendations contained in the Excess Liability Handbook accurately reflected what he was told as far as how he should conduct himself in handling cases with excess exposure. He further testified that the instructions and policies expressed in the Excess Liability Handbook were followed in the handling of the Campbell file.

16. The Handbook also contains information which is relevant to the issues of knowing misconduct, intent, motive, concealment of misconduct, absence of mistake, plan, preparation and pattern and practice.

17. For the foregoing reasons, along with others contained in the very extensive record in this case, the Court exercises its discretion and determines that plaintiffs have met their burden both with respect to relevance and foundation for the admission of Exhibit 21, the Excess Liability Handbook. The points raised by defendant go to weight, rather than admissibility, and to the extent the points raised by defendant have validity, they may be raised in challenging the weight which the trier of fact should give to this evidence.

18. The Court further exercises its discretion pursuant to Rule 403 of the Utah Rules of Evidence, and determines that the relevance and probative value of the Excess Liability Handbook are not substantially outweighed by the danger of unfair prejudice, confusion,

misleading the jury, considerations of undue delay, waste of time or needless presentation of cumulative evidence.

Defendant's Motion in Limine is denied.

DATED this 28 day of May, 1996.

BY THE COURT

/s/

Honorable William B. Bohling,
District Judge

FILED May 28, 1996

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IN THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	:	**ORDER REGARDING EVIDENCE OF SPOLIATION OF EVIDENCE**
Plaintiffs,	:	
vs.	:	Civil No. 890905231
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	:	Hon. William B. Bohling
Defendant.	:	

By way of preface, the Court notes that the record in this case is extensive with the court having conducted many days of hearings both with respect to discovery matters, motions to compel, motions for protective orders, evidentiary hearings with respect to the existence and non-existence of evidence and has reviewed extensive written and oral arguments relating to the subjects of this order.

In the court's order excluding the testimonies of witnesses Ivie, Glauser and Thornley, the court has attempted to explain that its rulings with respect to evidentiary and trial related matters cannot be fairly and accurately viewed in isolation. That is true of this order.

1. On March 29, 1996, defendant, State Farm, filed a motion in limine for an order excluding evidence of

spoliation of evidence. On May 9th State Farm filed a motion in limine for an order excluding evidence of document destruction in general and specifically the Samantha Bird 1990 memorandum, Elaine Rigler April 1990 minutes, "Buried Alive" video and 1995 letter from Dan Cochran.

2. Plaintiffs oppose each of defendant's motions.

3. The present action involves claims for bad faith, fraud and other intentional misconduct. It arises from an underlying case *Shusher v. Ospital and Campbell* which resulted [in] a verdict against plaintiff, Campbell, in excess of his policy limits with defendant, State Farm, in a trial conducted in Logan in 1983. An appeal was taken of the Logan judgment which was affirmed by the Utah Supreme Court in 1989.

4. Campbell originally filed this action in 1986. However, at defendant, State Farm's request, it was dismissed by the court as premature, as the appeal of the underlying judgment was still pending.

5. After the underlying judgment was sustained on appeal, this action was refiled in 1989. Discovery requests were served on State Farm in August 1989. Included in those requests were very broad requests for claims manuals, claims procedures, booklets, memorandum, audio and video tapes and a wide variety of other information.

6. In spite of this outstanding request, there is evidence in the record in this case that on April 5, 1990, in-house counsel at the regional office of State Farm, Janet Cammack, participated in a meeting with the claims management personnel for State Farm for the State of Utah. The minutes of the meeting ("Elaine Rigler minutes"), the personal notes taken by someone who attended it, and a memorandum written as a follow up to the meeting contain evidence indicating that instructions were given to destroy the very types of evidence which had been requested. (These documents were not produced by State Farm, but were obtained by plaintiffs from a former employee, Samantha Bird, who attended the meeting and who prepared some of the documents.) Samantha Bird has given both deposition

testimony and testimony at a Rule 104(a) hearing in this matter.

7. The follow up memo, prepared by Samantha Bird, written April 6, 1990, reads in part as follows:

> Yesterday in the staff meeting we talked about the need to purge our desks of all old memos, notes and procedural guides. With the increase of bad faith suits being filed against State Farm, it is important that you get rid of all your old stuff [sic] know that you have lurking around in your drawers and filing cabinets.
>
> Please get rid of all old memos, claim school notes, old seminar or claim conference notes and any old procedure guides you may have. They are trying to avoid having to come up with old records when the 'request for production of documents' comes in and they request 'all training manuals, memos, procedural guides, etc. that are in the possession of your claims reps and management', . . . that way if they subpoena our claim manual for U claims for 1987, for example, we will say we don't have it. This should be easier than trying to produce it or having to defend it.

8. State Farm has admitted that the Campbell case was the only bad faith case pending against State Farm in Utah as of April, 1990.

9. Janet Cammack, during this time frame, met with the other State Farm offices within the Mountain States Region as well.

10. There is evidence in the record in this case that in 1995 State Farm sent letters to the law firms it retains in various parts of the country instructing outside counsel that upon the conclusion of a case to immediately return original documents to State Farm and to destroy all others. ("1995 letter from Dan Cochran.").

11. By its own evidence, State Farm has confirmed in open court in hearings conducted in this case how successful their evidence destruction efforts have been.

A State Farm employee, Paul Short (who was State Farm's designated representative for the first trial in this case), spent many hours going to the claims offices in the state confirming that the requested documents had been destroyed.

12. State Farm, through representatives of counsel, through responses to discovery requests, and through numerous witnesses both by way of deposition and hearing conducted before this court, has consistently represented that much of the potential documentary evidence that plaintiffs have sought to discover in this case has been destroyed through State Farm's own efforts.

13. A designated spokesperson for State Farm at evidentiary discovery hearings conducted in this case, Karen Ortiz, admitted that claims manuals and claims materials are routinely requested in every bad faith case filed against State Farm. She also admitted that there are always bad faith cases pending against State Farm.

14. Accordingly, there is evidence in the record suggesting that while State Farm was instructing that documents be destroyed, not only was this case pending, but there were cases pending against State Farm around the country where such documents had been requested or were at issue. There is also evidence that State Farm knew or reasonably should have known that the evidence which was being destroyed at its instance would be relevant to and would be requested in discovery in future cases.

15. There is evidence before this court that State Farm had a practice of maintaining a historical file showing various versions and changes in its claims manuals. Plaintiffs have attempted to discover the claims manuals which were applicable prior to and at the time of the accident which is the subject of this case, defendant has represented that such prior versions of the manuals have been destroyed.

16. There is evidence before this court that the decision and approach to destroy and conceal evidence to prevent the use of such evidence in court proceedings against State Farm come from the upper levels of

management in the company. Associate general counsel for State Farm Insurance Companies, Leo Jordan, in a presentation given on August 14, 1979, stated in part:

> It cannot be overstressed, however, that the proper manner of avoiding damaging materials from reaching plaintiffs' counsel is not by attempting to log-jam the discovery process, but rather making certain such materials are non-existent *ab initio*. If the files and procedures are to be subject to judicial scrutiny, there must be absolutely no hint of disregard for the insuring public's interest.

17. There was evidence presented at an evidentiary hearing in this matter that State Farm's July 27, 1992 Operations Guide states in part:

> State Farm must strive to maintain a thorough and consistently applied inactive records destruction program. It is our best defense against costly judgments in court resulting from improper storage and destruction.

18. Several former State Farm employees have testified that destroying, altering and concealing evidence is common practice at State Farm.

19. At a[n] evidentiary discovery hearing conducted before this court over a three-day period in March of 1996, evidence was presented of destruction of documents, efforts by State Farm to conceal evidence and misrepresentation by State Farm of the existence of evidence.

20. While plaintiffs are not able to identify specifically every document which has been destroyed, they have been able to identify some specific documents which have been destroyed and are able to identify categories of documents which have been destroyed.

21. As part of plaintiffs' efforts to obtain discovery of documentary evidence, plaintiffs attempted to take the deposition of John Kodani, a resident of the State of California. Mr. Kodani's affidavit has been filed in this case indicating that he has over three million pages of

State Farm documents. Mr. Kodani is an attorney that does legal work and document processing for State Farm.

22. The court has reviewed the deposition transcript of the Kodani deposition. In spite of what appeared to the court to be good faith efforts by plaintiffs' counsel to pursue legitimate discovery, Mr. Kodani failed to produce a single document or to make a good faith effort to authenticate any of the documents which plaintiffs had obtained through other sources.

23. The court has heretofore determined discovery abuse on the part of State Farm in connection with the Kodani deposition and has sanctioned State Farm accordingly.

24. Under Rule 403, Utah Rules of [Evidence] the court finds that evidence of destruction and concealment is highly probative and does not find undue prejudice to State Farm if it is admitted. However, plaintiffs would be seriously prejudiced if the evidence were excluded.

25. It is not feasible in this order to outline with specificity all the reasons and basis for the court's order given the very extensive nature of the record in this case. Accordingly, the foregoing is not intended as an exhaustive recitation of the basis for the court's ruling, but is given by way of example.

For the foregoing reasons, among others, it is hereby ORDERED as follows:

A. Under the facts and circumstances of this case and in light of plaintiffs' claims and defendant's defenses, the court has determined that it is appropriate for plaintiffs to present evidence of State Farm's destruction and concealment of evidence.

B. The court does not make a decision at this point whether a jury instruction relating to spoliation of evidence will be given as requested by plaintiffs. The court reserves such decisions to be made later in these proceedings after hearing the evidence at trial.

DATED this 28 day of May, 1996.

BY THE COURT

/s/

William B. Bohling, District Judge

FILED Aug. 3, 1998

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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL, Plaintiffs, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY Defendants.	**ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL BASED ON THE COURT'S FAILURE TO TRIFURCATE THE TRIAL** Civil No. 890905231 Judge William B. Bohling

State Farm's motion for new trial based on the Court's failure to trifurcate the trial came regularly before the Court on the 18th day of December, 1997. Plaintiffs were represented by their counsel L. Rich Humpherys, Roger P. Christensen, Karra J. Porter, Laurence H. Tribe, and Kenneth J. Chesebro; defendant was represented by its attorneys Paul M. Belnap, Stuart H. Schultz, and Glenn C. Hanni. The Court has now heard argument of counsel, has considered the extensive memoranda filed by the parties, and has reviewed all the evidence submitted at the time of the trial. The Court makes the following findings and conclusions:

This Court finds that State Farm's motion for new trial based on the Court's failure to trifurcate the trial is without merit. Although the Court was not required to order a bifurcated trial, it did so at State Farm's request. This was done, over the Campbell's strenuous objection. Such bifurcation was an additional burden on the resources not only of the parties, but of the Court.

In effect, State Farm designed the bifurcation. It was State Farm that insisted on covering in the first trial only the threshold bad-faith issue, and to reserve all other issues for the second trial. At the time that State Farm made its motion for bifurcation and successfully persuaded the Court to grant it, it did not indicate that what it was really seeking was trifurcation. State Farm initially raised its trifurcation request after the first trial (more than two years after its original motion seeking bifurcation), and only a short time before the scheduled date for the second trial. When that motion was considered, the Court believed that trifurcation was unnecessary and impractical, and that it would not create prejudice to deny that motion, but would result in severe prejudice to the Campbells if the case were trifurcated.

The Court is convinced that State Farm was in no way prejudiced by this Court's denial of its motion for trifurcation. Furthermore, trifurcation would have required a continuance of the trial, which would have worked a hardship and been a great injustice to the Campbells in this case. By the time the motion for trifurcation was made, it had been approximately 13 years since the excess verdicts had been rendered against Mr. Campbell, this case had been pending for more than seven years, and one plaintiff, Mr. Campbell, was elderly and in poor health. Even proceeding with the trial as scheduled, Mr. Campbell's health only allowed him to participate on a very limited basis. A continuance and trifurcation would have also substantially increased the Campbells' litigation expenses, which were already huge.

At the time of State Farm's trifurcation motion, this case had already consumed a disproportionate share of

the Court's time and resources. Nearly all of the evidence in the three-week Phase I of the trial was presented again in Phase II, which lasted nine weeks. If the Court granted trifurcation, most of the evidence from Phase I and II would have also been a necessary part of the proposed Phase III, resulting in excessive duplication. A Phase III would have imposed an even greater hardship on the parties, their attorneys, the Court, the Court's staff, and another jury.

The Court is fully satisfied that it did not abuse its discretion in denying State Farm's motion for trifurcation. Accordingly, the Court hereby denies State Farm's motion for new trial based on the Court's failure to trifurcate.

DATED this 3 day of August, 1998.

BY THE COURT:

/s/

Honorable William B. Bohling
District Court Judge

FILED Aug. 3, 1998

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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	)	**ORDER DENYING STATE FARM'S MOTIONS FOR JUDGMENT NOV AND NEW TRIAL REGARDING INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
Plaintiffs,	)	
v.	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	Civil No. 890905231
Defendant.	)	Judge William B. Bohling

Defendant's Motion for Judgment Notwithstanding the Verdict Regarding Intentional Infliction of Emotional Distress came regularly before the Court on the 18th day of December, 1997. Plaintiffs were represented by their counsel L. Rich Humpherys, Roger P. Christensen, Karra J. Porter, Laurence H. Tribe, and Kenneth J. Chesebro; defendant was represented by its counsel Paul M. Belnap, Stuart H. Schultz, and Glenn C. Hanni. The Court has now heard argument of counsel, has considered the extensive memoranda filed by the parties and has reviewed the evidence submitted at the time of trial. The Court makes the following findings and conclusions:

1. After reviewing the jury instructions nos. 38, 39, 40 and 42, and the legal standard that applies to this motion and the Campbells' cause of action for intentional infliction of emotional distress, the Court concludes that there was competent evidence to support each element of the cause of action and concludes that there is no basis to grant State Farm's motion.

2. The Court heard competent evidence to sustain the jury's finding that the actions and omissions of State Farm constituted outrageous conduct under the circumstances of this case.

3. There was ample evidence for the jury properly to conclude that each element of this cause of action was properly proven. Some of the relevant evidence is set forth below.

a. At the time of State Farm's wrongful conduct, the Campbells were elderly and Mr. Campbell had residuary effects from a stroke and Parkinson's disease.

b. The Campbells were economically vulnerable, having suffered previous financial setbacks and having meager financial resources.

c. The Campbells were emotionally vulnerable and fragile. Mr. Campbell had previously experienced severe emotional trauma, including the murder of his first wife, the desertion of his second wife after his stroke, and the death of his third wife from cancer less than two years after their marriage. Mrs. Campbell had gone through a bitter divorce. The Campbells' home had previously gone into foreclosure and one of their cars had been repossessed due to the wrongful actions of Mrs. Campbell's ex-husband.

d. State Farm was aware of the Campbell's vulnerability and fragility, and of the complete trust the Campbells had placed in State Farm and its agents. State Farm intentionally and fraudulently betrayed this trust and took advantage of the Campbells' vulnerability.

e. The Campbells suffered severe shock and emotional distress resulting from the outrageous conduct of agents of State Farm who had presented themselves as "good neighbors" who would provide "peace of mind," and who held themselves out as

trustworthy individuals focused on protecting the Campbells.

f. State Farm lulled the Campbells into a false sense of security by representing that they had nothing to worry about when, in reality, the Campbells had serious excess exposure. While still under the effects of the shock of the excess verdict, State Farm instructed the Campbells to put a "For Sale" sign on their home. State Farm offered the Campbells no financial protection from the potential financial ruin caused by the excess judgment.

g. After defrauding and deceiving the Campbells and callously leaving them at the mercy of the judgment creditors, State Farm engaged in aggressive *contemporaneous* efforts to hide their misconduct and to make it extremely difficult for the Campbells to seek redress.

h. State Farm's callous and outrageous treatment of the Campbells was done pursuant to widespread corporate policies and practices and was not merely the result of misconduct by low-level corporate employees.

4. The above findings represent only a small part of the totality of the evidence and the reasonable inferences drawn therefrom, which support the jury's finding of intentional infliction of emotional distress. A detailed description of the evidence and the reasonable inferences that may be drawn from the evidence is contained in Campbell's memoranda on this issue.

The above summary of facts, together with the detailed summary of facts set forth in the Campbells' memoranda and oral argument, clearly demonstrate that there was competent evidence for a jury to find intentional infliction of emotional distress on the part of State Farm as it relates to both Mr. and Mrs. Campbell. The Court is satisfied that substantial evidence was submitted to the jury that could support the jury's verdict, and that the verdict is not manifestly against the weight of the evidence.

Based upon the foregoing findings and conclusions, the Court denies defendant's motions for Judgment NOV and for New Trial on the plaintiffs'

intentional infliction of emotional distress claims.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant's Motion for Judgment Notwithstanding the Verdict and for New Trial relating to plaintiffs' intentional infliction of emotional distress claims are hereby denied.

DATED this 3 day of August, 1998.

BY THE COURT:

/s/

Honorable William B. Bohling
District Court Judge

FILED Aug. 3, 1998

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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,	)	**ORDER REGARDING STATE FARM'S MOTION FOR A NEW TRIAL OR REMITTITUR REGARDING THE COMPENSATORY DAMAGE AWARDS**
Plaintiffs,	)	
v.	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	)	Civil No. 890905231
	)	Judge William B. Bohling

State Farm's motion for a new trial or remittitur regarding the compensatory damage awards came regularly before the Court on the 18th day of December, 1997. Plaintiffs were represented by their counsel L. Rich Humpherys, Roger P. Christensen, Karra J. Porter, Laurence H. Tribe, and Kenneth J. Chesebro; defendant was represented by its counsel Paul M. Belnap, Stuart H. Schultz, and Glenn C. Hanni. The Court has now considered the extensive memoranda filed by the parties, has heard argument of counsel, has reviewed the evidence submitted at the time of trial, and has considered all other information contained in the file. The Court makes its findings and conclusions as follows:

1. The Court finds that the jury verdict award of general compensatory damages in the amounts of $1,400,000 for Curtis Campbell, and $1,200,000 for Inez Campbell, is not fully supported by the evidence. This finding is based upon two factors:

a. There was a relatively limited period of time in which the primary stressor, i.e., the threat of financial ruin, was a real threat to the Campbells;

b. There was a lack of objective evidence of emotional or mental distress.

2. The Court finds, however, that there was ample competent evidence that the Campbells did suffer substantial general emotional damages as a proximate result of State Farm's wrongful conduct. The Court accordingly finds that, based on the evidence, the general damages suffered by the Campbells should be: for Mr. Campbell, $600,000; and for Mrs. Campbell, $400,000. The Court finds that these amounts are reasonable, appropriate and just based upon the evidence and the following considerations:

a. General damages are unique to an injured party and arise from the individually specific circumstances surrounding the wrongful conduct and damages, as well as the unique emotional makeup, personal history, and susceptibility of each individual. Pain, suffering, and other general damages are more difficult to quantify than numerically more precise economic damages, but are no less real, and should be fully compensated to the extent they are proven by the evidence. It may be reasonably assumed that not every victim of emotional injuries receives medical treatment from medical professionals. The absence of evidence of medical treatment, though a factor to consider, is therefore not dispositive of whether the injured party suffered severe emotional injuries. The determination of damages should be made from a review of all the evidence, which the Court has conducted.

b. The circumstances leading up to and surrounding the Campbells' general damages are a necessary part of the evaluation of their damages.

c. During all relevant times, the Campbells were economically vulnerable, having previously suffered financial setbacks and having modest financial resources. State Farm's wrongful conduct clearly placed the Campbells in the jaws of financial ruin. The reality of this situation was a stressor, which must be looked

upon as having reasonably triggered severe general damages.

d. During the applicable time, the Campbells were elderly, and Mr. Campbell was suffering from the effects of a stroke, as well as the early stages of Parkinson's disease. The Campbells did not have financial reserves and they lacked the ability to recover from the financial ruin with which they were threatened. Without that ability, the anticipation of the loss of their home and other assets was a highly traumatic experience to them.

e. The Campbells were emotionally fragile and vulnerable. Mr. Campbell had previously suffered a stroke. Both Mr. and Mrs. Campbell had suffered a considerable measure of tragedy and loss in their lives, more than what the Court would consider to be the normal experience of persons their age.

f. Mr. Campbell had previously experienced severe emotional trauma., including the murder of his first wife, his second wife's desertion following his stroke, and the death of his third wife from cancer less than two years after their marriage.

g. Mrs. Campbell had gone through a bitter divorce. Due to the actions of Mrs. Campbell's ex-husband (who had failed to live up to his post-divorce financial agreements), the Campbells' home had gone into foreclosure and one of their cars had been repossessed.

h. The Campbells were quiet, unassuming, and trusting individuals. By nature, they held their problems and emotions within themselves. Because of her husband's fragile health, Mrs. Campbell faced the financial and emotional burden of supporting her aging husband who had few financial resources outside of Social Security benefits. These and other experiences made the Campbells particularly susceptible and vulnerable to mental and emotional suffering.

i. It was clear from the evidence, and particularly the live testimony of the Campbells, that the Campbells suffered serious emotional and mental suffering as a result of State Farm's wrongful conduct.

j. The Campbells, who were trusting by nature, readily entrusted their financial and emotional wellbeing

to State Farm. After a tragic automobile accident in which one young man was killed and another was seriously injured, the Campbells relied completely on State Farm to protect them. The betrayal of this trust was traumatic and resulted in considerable general damages. The evidence supports a finding that the Campbells suffered a severe shock as they realized that the company in whom they had placed their full trust, which had assured them on more than one occasion that there was nothing to be concerned about, was deserting them as they faced imminent financial ruin from the excess verdict. Instead of mitigating the emotional trauma that was being caused by the result of State Farm's previous fraud and bad faith claim handling, State Farm greatly exacerbated the Campbells' emotional and mental injuries by instructing the Campbells to put a "For Sale" sign on their home and later suggesting they use their home as collateral for a supersedeas bond. The suffering from the betrayal was exacerbated by State Farm's well-understood and well-publicized policy of holding itself out as a "good neighbor," offering insurance products premised upon assuring consumers "peace of mind." The clear evidence of the Campbells' suffering due to State Farm's betrayal further justifies substantial general damages.

k. The outrageousness of State Farm's wrongful conduct is further evidence of the extreme stress to which the Campbells were exposed and further substantiates a significant general damage award. It would be unreasonable to assume that a person could be exposed to State Farm's outrageous conduct as were the Campbells, and not suffer severe mental anguish.

l. Many witnesses, including high-ranking State Farm officials, acknowledged at trial that an excess verdict alone (even if never executed on, in the end) would likely cause mental distress and would traumatically affect the insured.

3. There was extensive testimony and other competent evidence presented during the trial, only a part of which has been summarized above. This evidence is sufficient and adequate to support the

remitted amounts. It is not feasible for the Court to discuss here all of the evidence regarding damages, and the absence of discussion concerning a particular point does not mean that the Court has not made a careful review. On the contrary, the Court has thoroughly considered and carefully weighed all the evidence, including that which has been set out in the parties' memoranda and at oral argument.

4. The Court does not find that the jury acted under the influence of passion and prejudice in making its award of compensatory damages. However, the court finds that there was insufficient evidence to justify the total amount awarded in compensatory damages and therefore the Court grants State Farm's motion for a remittitur, in the amounts set forth above. In the event that the Campbells chose not to accept the remittitur, the Court would alternatively grant State Farm's motion for a new trial.

5. On the 5th day of January, 1998, the Campbells filed an acceptance of the Court's remittitur. The Court will accordingly deny State Farm's motion for a new trial.

6. The original judgment on the verdict filed August 8, 1996, will be amended to reduce the amount of general damages in favor of Curtis Campbell to $600,000 and the general damages in favor of Inez Campbell to $400,000. The judgment of compensatory damages should otherwise be unaffected by this order (e.g., with respect to the running of post-judgment interest).

Based upon the above findings and conclusions, the Court issues the following order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant's motion for a remittitur regarding the compensatory damages is granted. The judgment of the Court entered on August 8, 1996, shall be amended as follows:

1. The principal amount of the judgment based on the general damages awarded to Curtis Campbell shall be amended and reduced to $600,000, with post-judgment interest continuing to run from August 8, 1996.

2. The principal amount of the judgment based on the general damages awarded to Inez Campbell shall be amended and reduced to $400,000, with post-judgment interest continuing to run from August 8, 1996.

3. The principal amount of the judgment with respect to the special damages awarded to the Campbells shall be unaffected by this Order.

State Farm's motion for a new trial based on excessive compensatory damages is hereby denied.

DATED this 3 day of August, 1998.

BY THE COURT:

/s/

Honorable William B. Bohling
District Court Judge

FILED Aug 20, 1996

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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL, Plaintiffs, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.	**MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL OR REMITTITUR** Civil No. 890905231 Judge William B. Bohling

Pursuant to the Utah Rules of Civil Procedure, as more specifically set forth below, defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), moves the court as follows:

Pursuant to Rule 50(b), U.R.C.P., State Farm moves for judgment notwithstanding the verdict, and specifically moves the court to set aside the jury verdict and judgment in favor of plaintiffs and to enter judgment in favor of State Farm in the following particulars and on the following grounds:

1. There was insufficient evidence to support a jury verdict and judgment for fraud in favor of either Curtis B. Campbell or Inez Preece Campbell and against State Farm;

2. There was insufficient evidence to support a jury verdict and judgment for intentional infliction of emotional distress in favor of either Curtis B. Campbell or Inez Preece Campbell and against State Farm;

3. Imposition of punitive damages against State Farm in this case violates the due process clauses of the United States Constitution and the Utah Constitution because State Farm had no fair notice, based on the state of existing law, that its conduct was subject to punishment under Utah law;

4. There was insufficient evidence to support a jury verdict and judgment against State Farm for punitive damages;

5. Inez Preece Campbell has no cause of action, as a matter of law, against State Farm arising out of the May, 1981 automobile accident, subsequent lawsuit, trial, and judgments entered against Curtis B. Campbell;

6. There was insufficient evidence to support a jury verdict and judgment against State Farm and in favor of plaintiffs with respect to the issues of substantial likelihood of excess judgments and reasonableness of State Farm's decision not to settle the underlying case.

Pursuant to Rules 50 and 59, U.R.C.P., State Farm moves for a new trial on one or more of the following grounds:

1. Abuse of discretion by the court with respect to evidence admitted, evidence not admitted, and/or instructions given or not given, pursuant to which State Farm was prevented from having a fair trial;

2. Excessive general compensatory and punitive damages, appearing to have been given under the influence of passion or prejudice or other improper considerations;

3. General compensatory damages and punitive damages are grossly excessive and therefore in violation of the due process clauses of the United States Constitution and the Utah Constitution;

4. Punitive damages are grossly excessive and therefore violate the ban on excessive fines under the Utah Constitution;

5. The punitive damages award is unsustainable because it is based on conduct occurring in other states in violation of the due process and commerce clauses and comity principles of the United States Constitution;

6. Insufficiency of the evidence to justify the jury's verdict or that the verdict is against law in the following particulars and on the following grounds:

a. Insufficiency of the evidence to support the jury's verdict of fraud in favor of either Curtis B. Campbell or Inez Preece Campbell and/or that said verdict of fraud is against the law;

b. Insufficiency of the evidence to support the jury's verdict of intentional infliction of emotional distress in favor of either Curtis B. Campbell or Inez Preece Campbell and/or said verdict of intentional infliction of emotional distress is against the law;

c. Insufficiency of the evidence to support the jury's verdict of general compensatory damages in the amount of $1,400,000 in favor of Curtis B. Campbell and in the amount of $1,200,000 in favor of Inez Preece Campbell and/or that said verdict of general compensatory damages is against the law;

d. Insufficiency of the evidence to support the jury's verdict of liability against State Farm for punitive damages and/or that said verdict for punitive damages is against the law;

e. Insufficiency of the evidence to support the jury's verdict of punitive damages in the amount of $145 million and/or that said verdict for the amount of punitive damages is against the law;

f. Insufficiency of the evidence to support the jury's verdict on any cause of action of Inez Preece Campbell and that such verdict is against the law;

g. Insufficiency of the evidence to support the jury's verdict against State Farm with respect to the issues of substantial likelihood of excess judgments and reasonableness of State Farm's decision not to settle the underlying case and that such verdict is against the law;

h. Insufficiency of properly admissible evidence to support the jury's verdict with respect to fraud, intentional infliction of emotional distress, liability for

punitive damages, general compensatory damages, and amount of punitive damages, and that the verdict is against the law due to the court's incorrect decisions regarding evidence which was wrongfully admitted, wrongfully excluded, jury instructions which were wrongfully given or not given, and special verdict forms which were wrongfully given or not given; and

7. Error in law in the particulars and on the grounds as previously set forth above.

In the alternative, State Farm moves for a remittitur of the general compensatory damages and punitive damages, which are excessive as a matter of Utah law and as a matter of the due process clauses of the Utah and United States Constitutions and the excessive fines clause of the Utah Constitution.

Pursuant to prior stipulation of the parties and order of the court, the above-referenced motions will be further supported and documented in particularity by affidavit, memorandum and documentation to be filed within the timeframe set forth in the court's order of August 8, 1996.

DATED this 19th day of August, 1996.

STRONG & HANNI

By _____/s/_____

Glenn C. Hanni

Paul M. Belnap

Stuart H. Schultz

Attorneys for Defendant

Vol. R. 10259-4
SALT LAKE CITY, UTAH; JUNE 7, 1996; A.M. SESSION
* * *

MR. HUMPHERYS: Thank you, Your Honor. Plaintiffs call Gary Fye.

Vol. R. 10259-5

GARY T. FYE called as a witness by and on behalf of the Plaintiffs, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:
* * *

Q What type of work are you engaged in?

A I investigate and analyze insurance disputes, I'm a licensed independent insurance adjuster.

Q Have you worked for various forms of companies in the course of your lifetime?

A I have. I, since 1962 I've represented, or worked in cases involving somewhere between probably 100 and 200 insurance companies.
* * *

Vol. R. 10259-16
* * *

Q You're here as an expert; isn't that right?

A Yes.
* * *

Vol. R. 10259-46
* * *

Q (BY MR. HUMPHERYS) Mr. Fye, what I'd like you to do for a moment is to give us a basic lesson on what happens when a claim, or when an accident occurs which is covered by insurance, and what happens in the general claims processing, and what information we need to know, to comprehend what's going on behind the scenes.

A Let me start by explaining that insurance is a risk transfer device. You pay a premium, and a company that's in that business accepts the risk of something bad that happens.

And to give a technical explanation of insurance, it sounds pretty hard to fathom, but it's a combination of homogenous, which are the same type of exposure units,

that by application of large numbers, individual losses become collectively predictable.

And I don't mean to sound like double talk, there, but what that means is that when people pay their premium into a pool of funds, the insurance company can

Vol. R. 10259-47

use actuarial science, and they can predict that a certain number of losses are going to occur.

And this pool of funds is divided up, there are various portions for various reasons. There's a premium tax, there's a sales commission, which is called acquisition cost, there's overhead, which is the cost of maintaining a claims staff and buildings and so forth, and there's a portion called profit. In other words, insurance companies strive to gain underwriting profit from the sale of insurance.

But by far the largest amount of money in this pool is the portion that is set aside to pay claims.

When an insured buys protection, they have kind of a vested right, or ownership of those funds.
These funds don't belong to the insurance company, they don't at first belong to the person with, the third party over here who's had the accident with the insured, but there has to be an accounting function done, an investigation, and kind of an accounting function done about, where should the funds be diverted to do the job that the insurance company said it was going to do? And basically that job is to provide peace of mind —

Q To whom?

A To the policy holder.
* * *

Vol. R. 10259-58
* * *

Q All right. And would an adjuster be fulfilling his duty if he were attempting to evaluate it on some limited, or unfair way?

A If an adjuster — Yes, in the final analysis, if an adjuster, for instance, had a goal when he started the investigation that he was to pay 10 percent less than the value of that case, or if it wasn't a particular case, if he

was supposed to achieve
Vol. R. 10259-59
a 10 percent average reduction of claims, that would be grossly unfair to the parties. They wouldn't even know what was going on, and why they were withholding the money.

* * *

Vol. R. 10259-61

* * *

MR. HUMPHERYS: Now, Mr. Fye, one further note, as we conclude kind of our "Insurance 101" explanation, or instruction. Could you please explain to the jury, now, how claims, this claims process is affected by an arbitrary goal of reducing average paid,
Vol. R. 10259-62
or something such as that, how does that fit into this picture, and how does it affect these duties?

A Well, it distorts everything. But the final product of a goal like that would be to increase the take for the insurance company, and decrease the take for either the insured or the insuring public.

* * *

Vol. R. 10259-64

* * *

THE WITNESS: If you have a goal to delete 10 percent here, delete 10 percent here, and actually, the actual goals are not what you're deleting, because like in the medical field, because of new medical technology that's really quite expensive to develop, new drugs that have proprietary rights in them that cost a lot of money, actually medical care costs are increasing some percentage a year, so you have to add that percent to that reduction goal to get the actual amount that the claim is being reduced.

But be that as it may, the effect is to take this profit line and move it this direction. And when you have these goals, it creates a corporate culture that is predatory, that is it takes advantage of situations and people. And when adjusters make the hundreds of decisions that they make during the claims process, they just steadily erode the claim, and they create a windfall

right there, in other words they increase the company's profit, and of course that's cheating.

* * *

Vol. R. 10259-65

* * *

Q . . . All right, Mr. Fye, in the course of this case did you have the occasion to review all of the documents in the underlying case, including the claim file, the attorneys' files, the experts' files that testified in the Logan case, and all other documents pertaining to that?

A Trial transcripts, a whole lot of material, yes.

* * *

Vol. R. 10259-70

* * *

Q Was there anything about the wrongful death claim, as an adjuster, that you would say, "Oh, probably the jury won't consider this to be a valuable claim"?

A No. It was a valuable claim, and that was known right from the start.

* * *

Q (BY MR. HUMPHERYS) Based on your opinion, would there be any doubt in the mind of a reasonable and
Vol. R. 10259-71
prudent adjuster, I should say the mind of a reasonable and prudent adjuster, that this claim would exceed $25,000?

A None.

* * *

Vol. R. 10259-74

* * *

Q Was there any question in your mind — Or let me put it this way. Is there any question, in your opinion, that a reasonable and prudent adjuster would know that this claim of Mr. Slusher would exceed many times the policy limit of $25,000?

A Nobody in the insurance claims business would
Vol. R. 10259-75
have any doubt that this claim was worth far more than $25,000.

Q Now, did State Farm have an opportunity, within two or three months after the accident, to settle this, the Slusher claim, for $25,000?

A Yes, they did. Mr. Barrett, I believe in Logan, represented the Slushers, and they were, he made that demand.

Q And did State Farm refuse the demand?

A Yes.

* * *

Q And so if this would have been accepted, would the lawsuit have even proceeded?

A They could have stopped it right at that point, there wouldn't have been a lawsuit.

* * *

Vol. R. 10259-82

* * *

Q And taken collectively, and the bits and pieces that each saw, do all of them support the fact that Mr. Campbell was at fault?

A Yes, taken as a whole, which is how I was describing this evidence, there's a fairly overwhelming body of oral testimony among these six people that implicate Mr. Campbell as being at fault.

* * *

Vol. R. 10259-88

* * *

Q All right. With this BI report — Let me back up. Do you feel this is a complex accident that is hard to figure out?

A No.

* * *

Q Would common sense tell a reasonable adjuster that there would be exposure on the part of Mr. Campbell?

A Yes. And with the limits on the policy of

Vol. R. 10259-89

$25,000 apiece, there's no contest.

* * *

Vol. R. 10260-3

SALT LAKE CITY, UTAH; JUNE 11, 1996; A.M. SESSION

* * *

GARY T. FYE the witness on the stand at the time of adjournment, resumed the stand and was examined and testified further as follows:

* * *

Vol. R. 10260-70

REDIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10260-106

* * *

Q (BY MR. HUMPHERYS) Let me, first of all, show the jury some of the pages in the Excess Liability Handbook. Drawing your attention to Exhibit 21, the Excess Liability Handbook, page 2019. Hold on just a minute, I think that's not the right page. Page 2021.

A Okay.

Q Would you please read to the jury under the heading of "self-serving correspondence"?

A "The claim superintendent should not overlook the opportunity to strengthen his file by preparing self-serving correspondence. This bolsters our file as it expounds on the reasons we are taking the position stated in the particular file. If he calls upon the excess claim committee at an early time in the file, we may be able to suggest the text of such a letter."

* * *

Vol. R. 10260-107

* * *

Q All right. Would you read, now — First of all, what is the context of this part of the Excess Liability Handbook? What is happening, or what leads to this final note?

A Well, it deals with comments of defense attorney, about his analysis of the value and the chances for succeeding in a defense of a case, and about whether there's going to be an offer made using the policy limits or not.

Q All right, now, would you please read the section at the end, which has a note at the beginning of it.

A It says, "Note. This comment was made by a defense attorney, and indicates pessimism and doubt regarding our evaluation. In this circumstance, you could call him personally for an explanation of his comment, and request that he write a self-serving letter clarifying exactly what he meant, or, in the alternative, the claim superintendent can write a self-serving letter regarding the basis for the settlement authority extended."

* * *

Vol. R. 10260-108

* * *

Q (BY MR. HUMPHERYS) That is page 12 of part V of the Excess Liability Handbook. Drawing your attention, here, does this address the issues regarding defense counsel that's being retained by State Farm to represent an insured?

A Yes, uh-huh.

Q All right, would you please number 5 and 7?

A Number 5 reads, "Estimate as to the amount of verdict if plaintiff wins," and in parentheses, "not in writing if policy limits are involved," close parentheses.

Vol. R. 10260-109

Q In what context is this being portrayed?

* * *

THE WITNESS: The issue is that the company doesn't want the estimate put in writing if it exceeds or is close to the policy limits, because of the danger that there could be an allegation that the company behaved wrongfully, gambling about the policy limits.

Q (BY MR. HUMPHERYS) And here in number 7, does it essentially say the same thing?

A Yes, 7 says, "Opinion as to settlement value, parentheses, not in writing if possible limits could be involved."

Vol. R. 10260-110

Q Limits, meaning policy limits?

A Policy limits, yes.

Q All right. Now, we can't go into the entire book now. What I want to ask you, as it relates to those points we've just discussed, you are going to illustrate

that these kinds of wrongful principles are carried on orally. Can you please now relate to the jury, from the '86 conference training, whether or not these same principles were discussed and taught to the claims personnel?

A The notion that the auto company did not do this, that this was the fire company, is incorrect. Because the instructions in the auto company, seven years after this, was said to be obsoleted in this conference, basically set out very similar rules. The two rules in regards to this excess liability situation were —

* * *

Vol. R. 10260-111

* * *

Q (BY MR. HUMPHERYS) Is this the portion of the transcript that you're referring to?

A Yes, and maybe I should just read it.

Q All right, let's go ahead, then, and I'll put it up on the screen for the jury to see. Starting, I believe right here. Go ahead.

A "There are two inviolate rules to writing a document to the claim file. One is, it's on an eight and a half by eleven sheet of paper. And secondly, all documents are prepared 'Dear Mr. so-and-so,' and 'Ladies and Gentlemen of the jury.' If you follow those two inviolate rules, you'll have no problems. But those are rules that need to be followed by your outside counsel, as well as your claims personnel, and they should be so advised."

* * *

Vol. R. 10260-112

* * *

Q All right. Now, would you please read — One moment, please.

When it indicates that outside counsel should be advised, or should be so advised, is it appropriate, in your opinion, that an insurance company should be advising outside counsel, meaning someone like Mr. Bennett, to do the same thing, write his letters and memos and so forth to "ladies and gentlemen of the jury"?

Vol. R. 10260-113

A Well, I have a bit of a problem with that, another portion of the Excess Liability Handbook that basically anticipates that when some attorney is going to appear representing the insured, he's going to write a letter to the company demanding that the case be settled within the policy limits.

And when you basically tell that lawyer to prepare his file to protect the insurance company, and not to protect the insured, then you've created a serious conflict of interest, and a serious problem in his handling of the case.

* * *

Q I want to cover a couple of more areas raised by Mr. Belnap. Mr. Belnap asked you, or asked, didn't State Farm pay for all of the judgments, the excess judgments, in 1989?

A Yes, they did.

Q Over $300,000. And didn't they pay for all of the attorneys fees and expenses associated with that?

A Yes.

Q Now, he raised the issue of, how could that be profitable when they paid so much, when the policy

Vol. R. 10260-114

limits were only twenty-five, and they could have paid the twenty-five and been out of this for far cheaper?

A Right.

Q Is it profitable to do what State Farm has done?

* * *

THE WITNESS: It is extremely profitable, and I think we'll get to that later. But the issue is that people just go away when they meet resistance. They don't sue as easily as we're sometimes told.

I've never seen a case so clear as the Campbell case, here, where the attorney involved for the insured was able to continue for however many years this has been. The average individual doesn't have that kind of staying power.

* * *

Vol. R. 10260-115

* * *

THE WITNESS: The overwhelming value of taking a hard stand, or taking a tough stand on individual cases, is the very large number of cases that happen. And it's clear that for every one that will take on a company the size and with the resources of State Farm, there are hundreds, if not thousands that simply go away.

And it's a profitable stance, because it encourages the claims handlers that the company will back wrong decisions to the extent of the resources of the company. They'll just keep going and going.

* * *

Vol. R. 10260-120

Q Now, based on what you know, either in this case and others, does State Farm now keep a record of what excess verdicts there are against it?

A They say they don't.

Q Is there, since they did back in 1972, in your opinion have they lost the capacity to be able to keep a record of these?

A No. They have a considerable capacity. There's a book called "Electronic Marvels at State Farm Mutual" extolling, back in the sixties, what a tremendous data processing system for all manner of purposes the company had. There's no question that they had the capacity, and have it today.

* * *

Vol. R. 10260-135

* * *

GORDON ROBERTS called as a witness by and on behalf of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q And what is your occupation?

A I'm a lawyer.

Q You're here to testify as an expert witness?

A Yes.

Q You have a number of years of experience as a trial lawyer?

A Yes, about thirty.

Vol. R. 10260-142

* * *

Q Based upon your thirty years of experience,

Vol. R. 10260-143

your training, and all of the information that you've reviewed in this case, have you formed opinions with respect to this case?

A Yes, I have.

Q Would you state what opinion or opinions you have, please?

A Well, I have one sort of conclusory opinion, which is, in turn, based on a variety of sub-conclusions or opinions that I have come to.

My sort of final line is that the, in reviewing this thing, the only rational explanation that I can find for the failure of State Farm and Wendell Bennett to settle this case prior to or during the trial in Logan, the only explanation I can find for it is that, together Wendell Bennett and State Farm put State Farm's interests above those of Mr. Campbell and his wife.

* * *

Vol. R. 10260-159

* * *

THE WITNESS: If you look at this from a common sense point of view, and just think about it for a minute, you say, you know, Wendell Bennett takes the position that he did, testifying in this court, he takes the position

that whether Campbell had been there at that date or not, Ospital would have driven off the road, come back across the road, not off the road, but to the right, across the road, and smacked into Slusher.

I find that to be incredibly difficult to believe. And my view of this thing is that the rational explanation for this accident, as a matter of common sense, is that Campbell was passing in such a way that he created some perceived risk to Ospital, who then reacted to it by attempting to turn right, lost control of his car, and smacked into Slusher.

And I just think that is, there's no real other way to explain this, other than just some strange coincidence, that it just happened to be at this particular point in time of all of his life that Ospital decides to drive off the road and come back across it, just doesn't make any sense to me. So that's what I

Vol. R. 10260-160

wanted to add.

* * *

Q (BY MR. CHRISTENSEN) What have you concluded is the likely explanation for Campbell's, or excuse me, for Ospital's swerve to the right?

A I think I just said that. I think basically it is, the only thing I see that makes any sense is, he saw Campbell and Campbell presented a hazard to him, and he pulled off, took evasive action.

Q Given this analysis, do you have an opinion as to whether Mr. Campbell was at risk, if the case was not settled, that a jury would find the liability issue against him?

A I do have an opinion about that.

Q And what is that?

A I think he had a very substantial risk that the jury would assess him significant fault in this matter.

Q Are you aware that the Logan jury found Mr. Campbell 100 percent at fault?

Vol. R. 10260-161

A I'm aware of that.

Q Does that surprise you, given the evidence you're aware of?

A It doesn't surprise me, and a different result wouldn't have surprised me a great deal either. They could have found him less than a hundred, but a hundred percent does not surprise me.

* * *

Vol. R. 10260-167

* * *

Q Let's talk first about the Slusher claim. Mr. Slusher obviously was not killed, he was injured?

A That's correct.

* * *

Vol. R. 10260-169

* * *

Q I'm going to show you a letter Mr. Bennett wrote in July of 1983, after most of the investigation had been done in this case. And could I ask you — I'm going to have you set that right there — would you review, beginning with the description, the different injuries that Mr. Bennett describes that he has determined Mr. Slusher to have sustained?

A Yes, what he says, here, is he'd reviewed the hospital records. "You get a fairly good thumbnail sketch of the injuries sustained by Mr. Slusher, including fractures of the left ribs, a tension pneumothorax of the left lung, which would mean that air had escaped from the lung and was in the pleural

Vol. R. 10260-170

cavity."

Q Is that a punctured lung?

A Yeah. "A comminuted or displaced fracture of the left arm with avulsion or displacement of the biceps tendon with partial laceration of the brachial artery, a complete laceration of the high radial nerve, which would result in a loss of nerve function and muscle function down the outside of the arm."

Q Does that mean that Mr. Slusher lost part of the function of his left arm?

A Right. "Which would, unless repaired, ultimately result in a partial loss of function of the affected extremity, with the tendency for the hand to become a claw, a laceration into the radioulnary joint of the left

arm and avulsion of the brachioradialis," whatever it is, "and superficial branch of the radial nerve, injury to the medial ligaments of the right ankle, which would be a soft tissue grade 2 injury, an open comminuted fracture of the right patella with avulsion of some of the soft tissue ligaments to the," and then it goes on.

Q Is the patella part of the knee?

A Yeah. Then it just keeps going on here to the medial retinaculum and avulsion of the portions of the articular cartilage of the weight-bearing surface of

Vol. R. 10260-171

the medial femoral condyle of the right knee, and the laceration of the chin." And then it goes on to talk about operations and surgery and so forth that he'd had.

Q Okay. Did he have four surgeries in Logan and two more in Kentucky?

A I think that's right, yeah.

Q Now, this letter also refers to a report from Mr. Slusher's doctor, Dr. Terry. Do you have an understanding whether Dr. Terry did a whole man disability evaluation on him?

A I think he did. I don't have it handy, but I think he did, yeah.

Q Do you recall whether that was 50 percent?

A I'd like to look at it, but if that's —

Q Let me ask you to assume, for purposes of your testimony, that Dr. Terry gave him a 50 percent whole man disability rating. Is that a significant disability rating, in your experience?

A Very.

Q And Mr. Slusher was in his mid-twenties?

A Yeah. Young man.

* * *

Vol. R. 10261-4
SALT LAKE CITY, UTAH; JUNE 12, 1996; A.M. SESSION
* * *

GORDON ROBERTS the witness on the stand at the time of adjournment, having been duly sworn, resumed the stand and testified further as follows
Vol. R. 10261-5
further as follows:
* * *

Vol. R. 10261-6
* * *

Q Now, I want to move on to another area. Did State Farm have opportunities to settle the claims against Mr. Campbell for the policy limits of $25,000 for each claim?

A The record seems to be very clear about that, that they had opportunities throughout the course of the litigation, throughout the trial, up until the time that the verdict finally came in from the jury, where they had repeated opportunities to settle the case.
* * *

Vol. R. 10261-16
* * *

Q Now, Mr. Roberts, I think you were present in the courtroom yesterday for part of Mr. Fye's testimony. Do you recall evidence being presented from some State Farm manuals and materials instructing, in essence, that self-serving letters should be written to strengthen the file in a case where there's exposure above the insurance limits? Something to that effect?

A I recall that.

Q I assume you haven't studied those materials?

A I glanced briefly at them. I have not studied them.

Q Let me ask you, assuming that's true, that State Farm does instruct their people and the attorneys they hire to represent people they insure, to put self-serving letters in the file, to strengthen State Farm's position later in a bad faith case, is that a breach of the attorney's duty to his own client if he writes such letters?
* * *

THE WITNESS: If an attorney does that, that is he writes self-serving letters that exonerate the
Vol. R. 10261-17
insured inappropriately, what he's basically doing is putting the insurance company's interests ahead of those of the insured, to whom he owes his duty. So it does violate just a fundamental ethical rule that he's supposed to be representing his client zealously, unimpaired by other interests, including those of an insurance company.
* * *

Vol. R. 10261-37
* * *

Q . . . If State Farm was intending to pay the
Vol. R. 10261-38
judgments in full if they were sustained after the appeal, was there any reason why State Farm should not have been willing to post the supersedeas bond when Campbell needed him to do so?

A No. In fact, according to the letters and correspondence, the only reason they didn't post it is they recognized, and Wendell told them that if they posted the bond for the whole amount they'd end up paying it. And so that's the only reason I can see in the record that they didn't do it.
* * *

Vol. R. 10261-135

* * *

LYLE HILLYARD called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q And what is your occupation?
A I'm a lawyer.
Q Where do you practice law?
A In Logan, Utah.

* * *

Vol. R. 10261-137

* * *

Q Do you have extensive experience trying cases in Logan to juries selected from Cache valley?

A I have. My partner and I graduated from law school together in 1967, we went back to Logan and set up our own practice. At the time we were the only two lawyers not affiliated with the prosecution, and they didn't have public defenders, so we ended up doing a number of the criminal cases to start out with, but that involved quite a few jury trials, and we've continued that. That's really kind of my speciality, is involving trial work and in jury cases, where necessary.

* * *

Vol. R. 10261-143

* * *

Q Now, you're familiar with the Sardine Canyon

Vol. R. 10261-144

highway where this accident occurred?

A Very familiar.

Q Has it changed in the last few years?

A Yes, they just finished a new four-lane highway that's now open going through there, and may I say, they'd been planning it for many years. It's a great addition to our valley to be able to get in and out of that canyon.

Q Back in the 1980s, was that generally known in Cache valley as a dangerous area?

A Absolutely.

* * *

Q (BY MR. CHRISTENSEN) Did you have involvement, and have you had through the years, in getting public input as it relates to the concern over the hazard of the highway going through Sardine Canyon?

A I certainly have. Not only as I was president of the chambers of commerce in 1977 before I

Vol. R. 10261-145

ran for the legislature, and I've stood election since 1980, and I think been involved pretty heavily in public perceived issues in our valley, so I think I'm quite familiar with the public concern about Sardine Canyon, and the relief at finally having it broadened.

Q Was the danger of that canyon generally well known enough that you would expect at least some people that would serve on a jury would be aware of it?

A I think that's something that you'd be very aware of in trying a case involving Sardine Canyon, actually.

* * *

Q (BY MR. CHRISTENSEN) Should an attorney have been concerned about that, in assessing the risk to Mr. Campbell, if this case was allowed to go to a jury in Cache valley in 1983?

Vol. R. 10261-146

A I would dare say that if you had anyone who's lived in Cache valley very long, that in their immediate family have either had a near death, or a near serious accident in Sardine Canyon over the years. It's just the nature of that narrow canyon. And people who get bogged down with going slow traffic to try to pass, and the storms that can occur in that canyon, I think there's a deep concern of people in Cache valley about the safety of that canyon drive.

* * *

Q Are you aware that the jury found Mr. Campbell 100 percent at fault, and Todd Ospital zero percent at fault?

A That's my understanding.

Q Based on your knowledge of this case, does that finding, that is putting all the fault on Mr. Campbell, surprise you?

Vol. R. 10261-147

A No.

* * *

Q Were the verdicts higher than you would have expected from a Logan jury back in 1983?

A No. In fact, I would have projected higher verdicts based on those records.

* * *

Vol. R. 10261-150

* * *

Q Based on what you know about this case, did Curtis Campbell have serious risk of verdicts in excess of his policy limits if the case wasn't settled?

A Yes.

Q Was the law of joint and several liability applicable to this case?

A It was.

Q Did that make the risk to Mr. Campbell even greater than it would be today?

A Especially with the other defendant in this case being sued, the Ospital estate being basically insolvent except for the insurance. So if a verdict, a large verdict were brought back, and Ospital did not have the money to respond to it, which he'd only have, because of the death of this young man, have only the insurance, then Campbell, even though he may only be 5 percent or 10 percent or 15 percent at fault, if that

Vol. R. 10261-151

that's how the jury verdict came out, he could be liable for the full amount that was not available in the Ospital estate.

Q Did Mr. Campbell have anything to gain, in your opinion, by having this case go to trial?

A Absolutely not, with the small amount of insurance coverage, it could be settled for that, and have this ordeal over with, in my view he had nothing to gain at all with going to trial.

* * *

Vol. R. 10261-164

BRENT HOGGAN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q And what is your occupation?

A Well, I'm a banker and an attorney.

* * *

Q Have you practiced law in Cache valley for a number of years?

A Yes.

Q Mr. Hoggan, this case deals with some large verdicts that were entered against Mr. Campbell by a jury in Logan on September 20th of 1983. Two days after that date, September 22nd, 1983, did Mr. Campbell come to see you, to seek your advice with respect to those verdicts?

A Yes, he did.

Vol. R. 10261-165

Q That was in your office there in Logan?

A Yes.

Q Did you then meet with Mr. Campbell to discuss that issue?

A Yes.

* * *

Q . . . Had he come to see you to seek your advice with respect to the excess verdicts?

A Yes.

Q And you, then, met in that regard. Would you describe Mr. Campbell's emotional state at that meeting.

A It was very fragile. He was obviously

Vol. R. 10261-166

greatly distressed, and I felt concerned that he may even have a stroke or a heart attack, I was that concerned about his condition as I observed it.

* * *

Q Did Mr. Campbell express concern to you about losing his home and his personal assets?

A Yes, that was the principal concern that he had come to talk to my partner and I about.

Q In that meeting, did you write down a list, at least a preliminary list of what assets he had?

A I believe I penciled one in on a yellow sheet as we visited, yes.

Q I'm going to show you what's been marked as Exhibit 103, and ask you if that's a somewhat poor photocopy of the notes that you made of a preliminary list of Mr. Campbell's assets?

A It is.

Vol. R. 10261-167

* * *

Q Would you read that for us, please?

A "Home in Lewiston, $60,000, contract on Richmond, $50,000, life insurance C.," standing in my abbreviation, for cash value, "$7,000, savings, $4,000."

* * *

Vol. R. 10261-168

* * *

Q And let me make sure we've got this straight. You were sitting there in a meeting two days after these verdicts, talking about what property Mr. Campbell had.

A That's correct.

Q The actual judgments totaled about $185,000, I think the exact figure was $184,943. So rounded off would be $185,000. And these assets would total less than that amount, would they not?

A That's correct.

Q Did you discuss with Mr. Campbell what this may mean?

A Yes.

Q Did you tell him he didn't have anything to worry about?

A No, he had a lot to worry about.

Q Did he express to you whether he was in a position in his life where he could start over? That is start over acquiring assets, if he lost what he had?

A Well, I don't know that that was the focus of our meeting. He was past sixty years old at this point in time, and had had serious health problems prior to

Vol. R. 10261-169

this.

* * *

Vol. R. 10261-200

* * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10261-203

* * *

Q And did State Farm ever post a supersedeas bond that you're aware of?

A Not that I'm aware of.

* * *

Q How did Mr. Campbell keep from losing his assets while the appeal was pending? Was it from

Vol. R. 10261-204

anything State Farm did?

A Not to my knowledge.

Q Was it because Mr. Jensen, your partner, worked out an agreement with Slusher and Ospital?

A I believe that that was the reason why there was no execution on the judgment.

Q It wasn't anything State Farm did?

A Not to my knowledge.

Q As far as you were aware, was State Farm willing to let Mr. Campbell lose his home while they appealed the case?

* * *

THE WITNESS: There's nothing that I was told, or that I was aware of, that State Farm did to avoid that happening.

* * *

Vol. R. 10262-4
SALT LAKE CITY, UTAH; JUNE 13, 1996; A.M. SESSION

* * *

MILES JENSEN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q Are you a practicing attorney in Logan?

A I am, with the law firm —

Q How long have you practiced law in the Cache

Vol. R. 10262-5
valley area?

A Since 1975, about twenty years.

* * *

Q Now, there's evidence in this case of some large verdicts that were entered against Mr. Campbell on September 20th of 1983. On September 22nd, two days later, did Mr. Campbell come to meet with you and your partner, Mr. Hoggan?

A He did.

Q And you were present there that meeting?

A I was.

Q Would you describe, Mr. Jensen, what Mr. Campbell's emotional state was when he came in on September 22nd?

A Well, he's not a person who shows a lot of emotion. I would say, though, that he was personally very devastated, distraught, troubled, bothered, just extremely, just all tied up in knots, I guess, is one

Vol. R. 10262-6
way of saying it.

Q Did he express concern over losing his home and other assets?

A Yes, he did.

* * *

Q Was there actually a rough list of assets made at that meeting?

A There was.

* * *

Vol. R. 10262-7

* * *

Q Did you or Mr. Hoggan tell Campbell in that first meeting that he really didn't have anything to worry about?

A No, I don't think that would have been a fair assessment of his situation at all.

Q Were you deeply concerned yourself about what was going to happen to Mr. Campbell?

A Yes, I thought he was about as vulnerable as a person in that kind of situation can be.

Q Now, there's been discussion in this case that a person can't actually execute on a verdict, you have to have a judgment to start the execution proceedings. Do the court rules allow for verdicts to be turned into judgments fairly quickly?

A Yes, it's, customarily they are.

Q So, while Mr. Campbell wasn't subject to

Vol. R. 10262-8
having his property taken the day he came in, did you explain to him that that could begin happening within a few days?

A Yes, there would be — I'd not have expected something for at least one to two weeks, but as it turned out I think within about one week a proposed judgment was submitted to the court.

Q And that ultimately was not signed until November?

A Yes, towards the latter part of November.

Q But we're now dealing from hindsight. At that time did you explain to Mr. Campbell that realistically it could be a matter of days?

A I would have indicated to him that it could be a very short period of time.

* * *

Vol. R. 10262-28

* * *

Q Now, Mr. Jensen, there's been suggestion in this case that this was really no big deal for Mr. Campbell during this time frame, he really didn't have anything to worry about. Is that accurate?

A When — I had known Curtis Campbell for a long

time. In my experience Curtis was a very measured, very precise, very conservative individual. He was in his sixties when all of this happened. He had been very frugal, from what I had seen, he didn't have a lot of resources, and when he tells someone of that personality, who's spent a lifetime trying to get what

Vol. R. 10262-29

they do have, it may all be out the window, that's pretty tough.

* * *

Vol. R. 10262-47

* * *

Q Ultimately was there an agreement reached in December of 1984?

A That is correct.

Q And the fact that the parties had agreed not to take action to seize Mr. Campbell's property while negotiations were going on, did that completely remove any reason for Mr. Campbell to be worried or concerned?

A I'm sure that it helped, but it certainly didn't solve.

Q Until the agreement was actually signed in December, were the parties free to break off negotiations and proceed to execute on his assets?

A I think they would have had to have given us, as his counsel, some kind of reasonable notice. I don't think they could, or should have been able to just go to

Vol. R. 10262-48

the sheriff and have a notice tacked up on his front lawn. But it would probably not have been for very many days. They could have, either one could change their mind.

Q Did Mr. Campbell understand that?

A Yes.

Q Now, there was an agreement reached in December of 1984 —

A That's when the final signatures were placed on it.

Q And over a period of months there were negotiations back and forth?

A There were.

Q Some terms in the agreement were things Mr. Campbell wanted, some terms were things that Slusher

and Ospital wanted?

A That is correct.

Q Now, as the agreement was concluded--and the jury has seen this agreement before — it was ultimately signed December 6th of '84?

A Correct.

Q This would have been a year and, what, two months after the verdicts?

A Approximately. Well, no, it would be more like a year and three or four months after the verdicts.

Vol. R. 10262-49

Maybe a year and one or two months after the judgment was actually entered.

Q Now, was the agreement, as it was ultimately concluded, an assignment of the full cause of action, or did Mr. Campbell retain some interest in it?

A He retained a 10 percent interest in the cause of action, the claim.

* * *

Q During this entire time frame, do you recall anyone from State Farm expressing any concern to you or the Campbells about what was happening to the Campbells

Vol. R. 10262-50

personally as a result of State Farm's actions?

A Not at all. I mean there would be some nominal mentions in a letter, but nothing of any significance.

* * *

Vol. R. 10262-60

* * *

Q Now, looking back, it's easy to say that this time period that we've just discussed shouldn't have been any real concern to the Campbells because they didn't lose their home, or their assets. Would it be accurate for the jury to have the impression that this was no big deal back in late 1983 and in 1984 for the Campbells?

A When you think — When a person believes that everything's under control, everything is fine, there's no problem, don't worry, and then suddenly you're blind sighted, and suddenly everything that you've worked a lifetime to put together is on the line, that's not a minor

thing. That's pretty devastating.

* * *

Vol. R. 10262-126

* * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10262-131

* * *

Q Okay. Did you become aware of any indication from Campbell or Slusher during the time from the excess verdicts that you were involved, up to the date of the December 6th, '84 agreement, that Campbell and Slusher did not intend to exercise their full rights under the judgment?

A Just the opposite. You know, I'm not going to — I'm in no position as an attorney to bluff, to try and say to someone, "Oh, it's just a bluff, so if the sheriff shows up tomorrow, it's just a bluff." I can't play with people's lives that way.

The phone calls, the letters I received, made me very concerned that Mr. Barrett was very forceful, "Hey, executions are coming, I could do it right now. And you've got to have that bond." And then, I got

Vol. R. 10262-132

nervous because all I had was his note in my file.

And so I frantically called, and he was out and not available until the end of the year, so I got his partner to sign a letter, fortunately, so that I could at least get through the holiday season with Curtis until we were able to meet to say, "No sheriff until then."

* * *

Vol. R. 10262-134

* * *

Q (BY MR. CHRISTENSEN) Did you receive some indication through counsel that the parties were struggling with the decision, and weren't sure exactly what they wanted to do with their rights?

A Yes, they didn't like each other.

* * *

Q (BY MR. CHRISTENSEN) Explain what Ospital and Slusher were being asked to give up as part of this agreement.

A They had the immediate right to take all steps necessary to collect the full judgment of a

Vol. R. 10262-135

hundred and almost ninety thousand dollars. They apparently took steps with State Farm with the garnishment, and they had the right at any time to do that with Campbell.

But when they entered into the agreement with Campbell, they no longer could take and assert those rights to try and collect that $190,000, and it could be delayed — Well, here we are today.

* * *

Vol. R. 10262-190

* * *

ROBERT G. SLUSHER, JR.
called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q Mr. Slusher, are you the Robert Slusher who was involved in the accident in May of 1981 in Sardine Canyon?

A Correct.

Q And are you the one that brought the lawsuit against Mr. Ospital and Mr. Campbell?

A Correct.

* * *

Vol. R. 10262-203

* * *

Q Now, after the settlement, excuse me, after the trial of this matter, did you then seek to have Mr., did you then seek to have State Farm pay your full judgment?

A Yes, I did.

* * *

Vol. R. 10262-204

* * *

Q Were you in a situation where you needed money?

A Yes, I was.

Q Were there outstanding medical bills owing?

A Yes, there was.

Q Did you have any medical insurance to cover any of this?

A No, I did not.

Q Had you been able to work much at all since the time of the accident?

A No.

Q And what were your feelings regarding your desire to execute against Mr. Campbell's personal assets?

A I didn't think that — I talked to my folks, and as far as executing their property, and I decided to execute. I needed the money for school and stuff, you know, I

went back to school, and my injuries, and my medical bills, and I needed a place to live. I couldn't work.

Q And did you carry out your desires to execute, or did you then consider a possible agreement

Vol. R. 10262-205

with Campbells?

A Later on I decided to have an agreement with Mr. Campbell.

Q When you reached — What was your understanding of the agreement with Mr. Campbell? Would you continue your ability to execute on that judgment?

A No, I did not.

Q Did you understand, when you were thinking about making this decision, that you were giving up your right to execute and get your money?

A Yes.

Q Did that cause you any concern?

A Yes, I talked to my parents for a long time about it.

Q Was it an easy decision to decide to give up the right to execute against Mr. Campbell?

A No, it wasn't.

* * *

Vol. R. 10263-4
SALT LAKE CITY, UTAH; JUNE 14, 1996; A.M. SESSION

* * *

DONALD P. CAMPBELL called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10263-5

* * *

Q And what's your relationship to Curtis Campbell?
A He's my brother.

* * *

Vol. R. 10263-11

* * *

Q . . . Now, after the excess verdict was rendered — First of all, you weren't there when the verdict was announced, were you?
A That's correct, I was not.
Q Did you find out shortly thereafter?
A I did.
Q And tell me what you did.
A My sister called me and told me what the verdict had been rendered, and I said, "Well, I'll get with Curtis." So I went, I was in from the farm, from Idaho, I went immediately to Lewiston, and approached him there, and said, "Well," I told him that we needed to get someone else on board in this thing to help him. And told him that I was going to call Brent Hoggan and

Vol. R. 10263-12
his law firm and get an opinion and a feeling from them, which we did.
Q Would you describe, as you went over to Curtis Campbell's home that night, what type of condition he was in.
A He was very dejected. I'd never seen him so despairing and dejected and discouraged.

* * *

Q And were you able to witness the kinds of things that he was experiencing, at least while you were with him?

A Yes, I did.
Q And did he share with you what he was experiencing?
A Well, as we said earlier, Curtis is a private person. You had to pick up on those things. And it was clear evidence to me that it really was working on him. Both physically and mentally.
Q How about emotionally?

Vol. R. 10263-13
A And emotionally.
Q Thereafter, for the next, oh, year or so, did you see any kind of degeneration in what you perceived to be his condition?
A Absolutely.
Q In what way?
A Every way.

* * *

Q Mentally, did you see a difference in his ability to mentally deal with situations?
A Absolutely.
Q In what way?
A Mentally and physically and emotionally. Curtis seemed to be in a state of confusion, of frustration, of anxiety, all of those played upon him heavily, I felt.

* * *

Vol. R. 10263-37

* * *

PAUL BRENKMAN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q Are you here today because you've been subpoenaed to be here?

A Yes.

Q What is your current employment?

A I work for Allstate Insurance Company.

Q What's your position there?

A Market claim manager.

* * *

Vol. R. 10263-39

Q Did you have some involvement on behalf of Allstate Insurance in the Campbell, Slusher, and Ospital matter?

A Yes, I did.

* * *

Q Now, the jury's already heard that there were two different policies that applied to the Ospital part of the case, the Farmers policy that was on the car with limits of $30,000, and would you explain how the Allstate policy applied to the Ospitals.

A Todd Ospital was driving a borrowed car. The borrowed car belonged to a person named Brooks, so Brooks was insured by Farmers, therefore they were the primary insurance carrier and had a policy limit of $30,000. In a case that has greater value than that, Ospitals' policy of $100,000 would, therefore, take effect as a secondary layer of insurance.

Q So Allstate's policy kicked in, so to speak.

A Yes.

* * *

Vol. R. 10263-43

Q How serious of an injury case was this?

A Very severe, because it affected not only the nature of pain and suffering and those kinds of things, but had an economic impact involved with it that would

perhaps carry on into the future.

Q What do you mean by the economic impact?

A Mr. Slusher was a welder by occupation, he was very young at the time of the accident, I'm thinking twenty-five, twenty-six years old. He, being a welder by occupation, takes a lot of manual dexterity. He had

Vol. R. 10263-44

numerous injuries. The one that I was the most concerned with, the radial nerve in the arm was severed. I guess I felt that he would never have full and complete use of the arm, and therefore would not be able to be a welder again, so that had a very large economic impact.

* * *

Vol. R. 10263-51

* * *

Q Now, in handling this matter, did you become

Vol. R. 10263-52

aware of factors affecting the value of Todd Ospital's death claim?

A Yes.

Q And what were those?

A A wrongful death claim, according to my understanding, is a derivative action. And what it amounts to is what the parents, what those heirs have lost. And Mr. Ospital was an outstanding young man.

Q What did you understand about him?

A At his high school, which I'm very familiar with, I went there myself, he was the star athlete in the high school, and simultaneously was a sterling scholar. A really unusual combination. And then he made a very tough decision whether to pursue an athletic scholarship, which was certainly available, or whether to pursue an academic course of action, and he chose to set the athletics aside and put his full-time efforts into his academic study.

As I investigated that case, everything that I learned about him, I was remarkably impressed. He was the kind of person that would make every parent proud.

* * *

Vol. R. 10263-93
JOHN L. OSPITAL called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

* * *

Vol. R. 10263-94
DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10263-95

* * *

Q Do you have children?
A Yes.
Q How many children did you have?
A We had two.
Q And what are their names?
A Todd and Chris Ospital.
Q What is Chris' age?
A Chris is thirty-six now.
Q And what age would Todd have been, if he were alive?
A He'd be twenty-four. No, I'm sorry. He was born in '62, so he would be thirty-four.
Q Thirty-four?
Vol. R. 10263-96
A Thirty-four years old.
Q All right. And how old was he when he passed away?
A Nineteen.

* * *

Vol. R. 10263-104

* * *

Q Did you, during the trial, continue to indicate to State Farm that you would consider to try and settle the case during the trial?
A Absolutely. About every day.
Q And did State Farm — Well, let me ask. Who was that through?
A Through yourself.
Q And to whom?
A To Wendell Bennett, the representative of State Farm.

Q Did he ever indicate any willingness by State Farm to offer any amount?
A No.
Q Now, was it difficult for you to go through that trial?
Vol. R. 10263-105
A Absolutely.

* * *

Q At this juncture were you then considering the possibility of collecting on your judgment since State Farm did not offer to pay?
A Yes. It was a gut-wrenching situation, where we were angry at losing our son's life. I didn't know how to, you know, how to handle that. I've never had to handle anything like that in my life. I didn't, I felt like that by ruining someone else's life by taking everything they owned was not going to solve anything,
Vol. R. 10263-106
either. I was kind of tossed in between. I did not feel like the award was proper, and I did not feel like that the whole situation was like it should have been.

* * *

Q Did you consider possibly entering into an agreement at that time whether to waive, or to delay your chance of getting recovery by executing on Mr. Campbell's assets, versus entering into an agreement where you would wait and try and get it later, through State Farm, through a separate action?
A I felt like that State Farm had caused me to go through a trial that was not necessary, State Farm had stopped every effort we had made to settle this case, and I felt like that State Farm should have taken the responsibility and done the job they should have
Vol. R. 10263-107
done for their clients so this whole thing would have been resolved and we would have been, the closure would have been there, and we would have, it would have been finished.
Q Ultimately — And I think the jury's heard about the 1984 agreement that was reached. Was that a difficult decision for you to make, to enter into this

agreement?

A Yes, it was very difficult.

* * *

Q Did you have any impressions, back at this time when you were making the decision, did you have any guarantee that you would be paid any amount on your judgment?

A No.

* * *

Vol. R. 10263-143

MR. HUMPHERYS: Yes, plaintiffs call Curtis Campbell. Your Honor, Curtis Campbell has a very difficult time speaking, he gave his sworn testimony back in 1990 in the form of a deposition. We'd propose reading that, since it would be nearly impossible to have his testimony elicited in the typical fashion.

* * *

Vol. R. 10263-181

* * *

"Q Okay, Mr. Campbell, tell me this. Now that State Farm has paid these judgments with interest and costs in full against you, paid the judgments that were against you and had paid them in full, in what way do you feel that you've been damaged?

"A I don't think anybody could dig up enough money to put me through the emotional stress and strain that this has brought on me. I wouldn't sell for any amount of money what this stress has caused me. Nobody could hire me to do it.

* * *

Vol. R. 10263-248

* * *

"Q Did you suggest to Mr. Bennett that you didn't want to consider settlement, but that you basically wanted to vindicate yourself?

"A I told — I reminded him, 'I took out insurance because I didn't want to have to pay anything myself. And beyond that, if State Farm felt there was no risk, it's up to them to do what they wanted.'

* * *

Vol. R. 10264-4

CRAIG C. KINGMAN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10264-5

Q What is your current employment?

A I'm a divisional claims superintendent with State Farm.

MR. CHRISTENSEN: Your Honor, Mr. Kingman is currently an employee of State Farm, he's also the designated State Farm representative for this trial. May I lead this witness as an adverse witness?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) Mr. Kingman, is that true, are you the representative of State Farm that has been designated for this case?

A Yes, I am.

* * *

Q You're the divisional claims superintendent over northern Utah and Wyoming?

A Yes, I am.

Q Is that the area from Salt Lake City, north?

A Yes, I have offices in Centerville, Ogden, Logan, and then Wyoming.

Vol. R. 10264-6

* * *

Q . . . And have you been with State Farm for seventeen years?

A It'll be seventeen years in July, yes.

Q You began in 1979.

A That's correct.

Q In July of '94, which would be about two years ago, you were promoted to the position you now hold of divisional claims superintendent, and were sent to Utah.

A Yes, that's true.

Q And I've forgotten, where did you come from?

A I was a claims superintendent in Ft. Collins, Colorado, before this trip.

Q Was that part of the Mountain States Region?

A Yes, it is.

Q The regional headquarters for Utah, Colorado, and Wyoming are there in Greeley, Colorado, are they not?

A Yes, our regional office is in Greeley, Colorado.

Q So was the regional vice president the same man who's over Utah, that being Mr. Moskalski?

Vol. R. 10264-7

A Yes, Mr. Moskalski is the regional vice president.

Q Now, in your current position, are you over about 105 State Farm employees?

A Yes, that's approximately the number, that's correct.

Q And your current plans are to spend your career with State Farm?

A Yes, I hope to. It's a good company, I enjoy working for them.

Q You currently have some responsibility over the Campbell case; isn't that true?

A Yes, I am supervising the day-to-day activities of the Campbell case.

Q And because it arose out of the northern Utah area, and that's your area, you have some jurisdiction over the case.

A That's correct.

* * *

Q Did you take over the Campbell case about a year ago?

A Yeah, about a year ago I assumed

Vol. R. 10264-8

responsibility for it.

Q You were present for most of the trial last October, were you not?

A Yes, I was.

Q And we went through the State Farm files, Mr. Bennett's files, on a number of occasions in that trial, did we not?

A Yes, we did.

Q We kind of beat that to death?

A Yes.

Q You've also attended many hearings in this case in preparation for this trial and the prior trial; isn't that true?

A Yes, that's true.

Q State Farm has listed you as a witness in this case?

A Yes, I am.

* * *

Vol. R. 10264-16

* * *

Q You're telling us today, under oath, you don't know that State Farm took the position that there

Vol. R. 10264-17

was not a likelihood of an excess verdict against Mr. Campbell?

* * *

THE WITNESS: No, I agree with the results of that first trial. There was a substantial likelihood of that excess verdict. And looking back on it, I believe we should have paid the policy limits when we had the opportunity to do so. That was an honest mistake on our part.

Q (BY MR. CHRISTENSEN) You agree with what the jury found last October.

A Yes.

* * *

Q And yet State Farm put the Campbells through thousands and thousands and thousands of dollars of expense, and a ten-day trial to prove that there was a substantial likelihood of an excess verdict against the Campbells, didn't they?

A That was what the jury determined in Phase 1.

Q And you agreed with it.

Vol. R. 10264-18

A I agree that, looking back on it, knowing what I know now, we certainly could have and should have paid our policy limits to resolve that claim.

Q You'll admit that now, because the jury's already found it. You don't have a choice, do you?

A I don't know that I don't have a choice. I formed that opinion.

Q And yet State Farm wouldn't admit it last October, would they?

A State Farm, I think, took a position that they believed Mr. Campbell initially, and handled that claim to the best of their ability at the time.

Q State Farm took the position there was no substantial likelihood of an excess verdict against Mr. Campbell last October, didn't they?

A Yes, they took that position.

Q And they put on many witnesses to support that.

A Yes, they did put on a lot of witnesses.

* * *

Q Mr. Kingman, did you try to do anything about that? Did you say to anybody at State Farm, "This isn't fair, we ought to take some responsibility, here"?

Vol. R. 10264-19

* * *

A Uh-huh. I looked at the file, attended the hearings, and observed the verdict. And I think, following that verdict, following, believing what that jury told us, that we have some responsibility in not paying those policy limits when we had the opportunity to do so.

Q Are you telling me you couldn't figure that out until the jury told you?

A Well, Mr. Christensen, I wanted to hear all of the evidence. And again, based on all of the testimony that I heard, the conclusion that I felt we should have paid the policy limits, that's the decision that I reached.

* * *

Vol. R. 10264-22

* * *

Q Now, Mr. Kingman, it was your testimony under oath, was it not, in your deposition, that in seventeen

Vol. R. 10264-23

years at State Farm, State Farm had never emphasized reducing or controlling average pay per claim.

A Yes, that's correct. It's a measure, it's a statistic that we have, but in my experience it's never been emphasized on any type of performance evaluation.

Q Another term that's used for average pay per claim is average paid cost.

A Yes.

Q And in fact, that's the one you're more familiar with?

A Yes, it is.

Q Is another term that refers to this same concept is claim severity?

A Yes, I believe that's a term that means the same thing.

Q And your sworn testimony last April and today is, State Farm does not emphasize that?

A My testimony is that it's an awareness, State Farm has an awareness of those costs, and they need to. But as far as emphasize to the point of being salary consideration or promotional consideration, no, that's not a consideration.

Q Or performance consideration, it's not a consideration.

A No. As I've met with people that I

Vol. R. 10264-24

supervise, and have met with people that supervise me, we have not discussed average paid costs in any kind of context related to performance. As I've stated, I think it's more of an awareness.

* * *

Vol. R. 10264-27

Q It's your sworn testimony, is it not, that in seventeen years at State Farm you have never seen a claimant receive less than full fair value for their claim. Isn't that true?

A Yes, I am not aware of any situation where State Farm took advantage of anyone in settling their claim.

Q In seventeen years.

A That's correct.

* * *

Vol. R. 10264-45

* * *

Q You agree, certainly, don't you, Mr. Kingman, that there's no proper way for State Farm to make a profit on claims?

A Yes, in the claims side of it all we do is pay out the money, we don't take any money in. So it's hard for us

to make a profit when we don't take any money in claims.

Q The idea of profit just doesn't fit in claims, does it?

A No, the objective of claims is to pay what we owe.

Vol. R. 10264-46

Q Not a penny more, not a penny less?

A If you're good enough to get it that fine, great. But as I said, I'm not good enough to call it that close in most cases.

Q That's what State Farm teaches, is it not? That's a slogan at State Farm?

A That's a slogan that I think reflects a philosophy of paying a fair value, especially in BI, in bodily injury claims, finding a range that you feel is fair, and paying that range.

Q You've heard hundreds of times at State Farm, have you not, "We pay what we owe, not a penny more, not a penny less"?

A Yeah, I've heard the slogan.

Q Getting back to this concept of profit on claims. An insurance company like State Farm has to make its profit on premiums or on investments, not on claims; isn't that true?

A Yes, that's correct.

Q Claims is where State Farm takes the money it has, and pays what it owes.

A That's right.

Vol. R. 10264-48

* * *

Q Mr. Kingman, you claim you're not aware of any bad faith verdicts against State Farm; isn't that true?

A Yes, that's true.

* * *

Vol. R. 10264-49

* * *

Q And you're not aware of any punitive damage

Vol. R. 10264-50

verdicts against State Farm.

A No, I've not had any personal experience with punitive damage verdicts within State Farm.

Q And you've not heard of any?
A Not that I can recall, no.

* * *

Vol. R. 10264-52

Q All right, let me see if I can conclude, here. Mr. Kingman, it's your sworn testimony that you see nothing wrong with how State Farm has treated the Campbells; isn't that true?

A It's my testimony that —

Q Let me stop you there. I want a yes or no to

Vol. R. 10264-53

this. It is your sworn testimony that you see nothing wrong with how State Farm has treated the Campbells?

A That's my testimony, yes.

* * *

Vol. R. 10264-101

JOHN W. CROWE called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10264-102

Q Would you outline your background while you were employed with State Farm, briefly, the positions you held, and the time frames that you held those positions?

A Okay, I started with State Farm in 1965 as a claim representative trainee with the auto company, I received several promotions in the claim ranks up through, oh, probably 1972.

In 1976 I transferred to State Farm Fire and Casualty Company, 1979 I was promoted to a claims superintendent in Annendale, Virginia. In 1986 I was promoted to a divisional claims superintendent in Salt Lake City, and then in 1989-90 I had two of the darkest years of my life and I had some serious, real serious financial and marital problems, and things felt apart, and I was demoted in February of 1990, and on December 6th, 1990 I was terminated with State Farm.

* * *

Vol. R. 10264-112

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Q Was reducing average pay per claim emphasized at the auto company?

A Yes.

* * *

Q Was the PP&R program one of the methods that was used to emphasize reducing and controlling average pay per claim?

A Yes.

* * *

Q Did you provide, as part of the discovery in this case, some documents that you had in your possession from your years at State Farm?

A Yes, I did.

Q Did you provide a copy to me, as well as other counsel in the case, of your PP&R from 1987?l

A Yes, I did.

* * *

Vol. R. 10264-113

* * *

Q Okay, would you explain what a PP&R is.

A Okay, a PP&R is performance, planning and review, which is the system State Farm uses to review an employee's performance, and evaluate their next salary increase.

Vol. R. 10264-114

Q Let me show you one page from your PP&R. Are these goals that you set with your supervisor?

A Yes.

Q This D, "Hold average paid auto BI, PIP, PD indemnity costs within 5 percent of '87." Did that refer to State Farm Fire, or State Farm Auto?

A That refers to auto.

* * *

Q All right, let me move on, I'm going to skip some things in the interest of time. This is already an exhibit, I'm not going to make it another one. This was marked as Exhibit 1 to your deposition. Would you explain what that is?

A This is the performance, planning and review, it was a manual to be used as a guideline when the PP&R, performance, planning and review process went into effect.

Q Was that 1979?

A I believe so.

Q Does this apply to both State Farm Fire and

Vol. R. 10264-115

auto?

A Yes, it does.

Q And did this document come from records you kept when you left State Farm?

A Yes.

Q Are you aware that State Farm claims it does not have this document?

A That's my understanding.

Vol. R. 10264-204

* * *

CURTIS B. CAMPBELL called as a witness by and on behalf of the Plaintiff,

Vol. R. 10264-205

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10264-208

* * *

Q All right, now, let me ask you, Mr. Campbell, did you have communications with Ray Summers, the adjuster for State Farm, shortly after the accident?

A Yes, I did.

Vol. R. 10264-209

Q Did Mr. Summers indicate to you that you were not at fault?

A Yes, he did indicate I wasn't at fault.

Q Later, when a lawsuit was filed by Mr. Slusher, did Mr. Bennett, or was he hired to represent you by, was he hired by State Farm to represent you?

A Yes, he was.

Q Did he ever — Or what did he tell you regarding whether you were at fault or not?

A Whenever he spoke to me on May 5th, he said it looked like it was a complete clear case, that I had no fault.

Q Did Mr. Bennett ever explain to you that there was adverse evidence which would indicate you might be found at fault?

A No, he didn't.

Q When was the first time that you heard adverse evidence that you might be found at fault?

A When we were at the trial.

* * *

Vol. R. 10264-210

* * *

Q Did Mr. Bennett ever suggest that you hire a separate attorney to represent you?

A I'd asked him two or three times what he thought about it.

Q And what did he tell you?

A He said there's no need.

Q He said there's no need?

A No need.

* * *

Vol. R. 10264-211

* * *

Q Mr. Campbell, did he ever discuss with you the fact that there could be an excess verdict against you?

A He said that, he talked about that. He said that if there's any judgment against me it would be well within the limits of the policy I had.

Q If there was a judgment against you, it would be well within the policy limits that you had?

A Yes.

Q Did you ever insist and require that State Farm try this case?

A No, not that I ever remember. If they got that impression from me, they totally misunderstood me.

Q Was it your desire to have this matter resolved?

A Yes, that's — One way or another.

Q Was it important to you that the case be tried, no matter what?

A No.

Vol. R. 10264-212

Q When Mr. Bennett told you that you had, that there was not a problem, that you were in the clear, and you didn't have exposure, did you rely upon that?

A I did rely on it.

Q If he would have told you that you had a risk of an excess judgment that might affect your personal assets, would you have wanted to go out and hire an attorney in your own behalf?

A I would gladly have done that if I'd known the problems.

* * *

Vol. R. 10265-4 SALT LAKE CITY, UTAH; JUNE 19, 1996; A.M. SESSION

* * *

JOHN W. CROWE called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

Vol. R. 10265-5

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10265-7

* * *

Q Yesterday Mr. Kingman testified that State Farm always pays full fair value of every claim. Is that consistent with your experience at State Farm?

A No, it is not.

Q What were you taught with respect to whether or not you should settle as cheaply as you could?

A We were taught to settle a claim for as little as possible.

Q What training, if any, did you receive with respect to whether people tend to know what their claims are worth?

A Most lay people don't have the slightest idea as to what their claim is worth.

* * *

Vol. R. 10265-12

* * *

Q When you would settle a claim for substantially less than State Farm had decided it was worth, were you told, "That's not fair, you shouldn't have done that"?

A No.

Vol. R. 10265-13

Q What were you told?

A Well, usually you received a memo or some response saying, "Good settlement."

Q And you were praised for that?

A Yes.

Q Were you encouraged to do it again?

A Yes.

* * *

Vol. R. 10265-17

* * *

Q Now, Mr. Kingman testified yesterday that there was not emphasis at State Farm on reducing average pay per claim. Is that true?

A My opinion it's not.

Q I'm going to — We showed you your PP&R from 1987 yesterday. I'm going to show you a page from your PP&R from 1988, and I'm going to point to you to item D under section, Roman Numeral III. What is — Would you read that, please?

A It says, "Reduce average paid BI fire company indemnity costs by 10 percent of 1988."

Q What does the BI stand for?

A Bodily injury.

Q Is that an example of emphasis that was placed on reducing average pay per claim?

A Yes.

Q Were you expected to try to meet that goal?

A We tried to meet that goal.

Q Now, you were a supervisor at this time?

A In 1988?

Q Yes.

A 1988 I was a divisional claim superintendent.

Q To achieve that goal, did you have to get

Vol. R. 10265-18

other people to reduce their average pay per claim?

A You'd have to try, to get the whole division to reach that goal.

* * *

Vol. R. 10265-24

* * *

BRUCE A. DAVIS called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

* * *

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10265-25

* * *

Q During what time frame were you a State Farm Auto employee?

A As best as I can recall, I was hired by them in the late spring, early summer of 1978, and I left their employ in 1985.

Q And where did you work for State Farm?

A It was primarily in and around the Denver metro area. . . .

* * *

Vol. R. 10265-26

Q Was that area of State Farm part of the Mountain States Region?

A Yes, sir, as is Utah and Wyoming, or at least it was at the time.

* * *

Vol. R. 10265-29

* * *

Q Okay. Did you leave State Farm voluntarily?

A Yes, sir, I did.

Q Did they indicate to you they'd hire you back? A They made it very clear the day that I left, there are forms and documents that you fill out as you're leaving their employ, and one particular document, my supervisor and his immediate supervisor made it very clear to me, and they filled out a portion of the document themselves that said that they would hire me back.

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Vol. R. 10265-31

* * *

Q (BY MR. CHRISTENSEN) Do you recall at State Farm ever hearing reference to the number of claims per

year?

A Yes, sir, that's correct. It was the volume that we were handling nationally, and locally, was discussed on a regular basis.

Vol. R. 10265-32

Q Was it ever discussed in the context of, if you could reduce the average amount you paid, what that would mean to State Farm?

A Those kind of comments were generally and regularly boiled down to an issue of money. And oftentimes that boil down would result in a comment that we heard regularly about reduction of costs per claim.

It was nearly daily that this admonition would come in some form or another, either a jingle or a slogan or an admonition or a note from your supervisor, or part of the agenda of a monthly unit meeting where a lot of the staff was brought in and reminded that, "If you can just save a few dollars today in each file, it will equate to millions of dollars of savings on a daily basis. This is a large corporation."

Q How important, from what you observed, was it to your career at State Farm to take the emphasis on average pay per claim seriously?

A In my job performance reviews, it seemed to be the very first thing talked about. It always, as they took you in a room to visit with you one on one a couple of times a year about your performance within your job description, your ability and performance to reduce their payout in a claims environment seemed to be agenda item one whenever they were talking to you about

Vol. R. 10265-33

your performance.

Q Did you observe some methods — and I'm not suggesting all the methods used — but did you observe some methods used at State Farm to achieve reduction of average pay per claim that you considered to be unfair?

A Yes, sir, that's correct. Not only did I, unfortunately, not simply observe them, but I was an integral part of that every day.

Q By the way, are you being compensated for your time to testify?

* * *

A I refused any compensation.

* * *

Q Now, in 1981, did you receive a Cat Team assignment at State Farm?

A Yes, sir, I did. It's a nickname, or abbreviation for catastrophe team, and they selected me out and offered me an opportunity to participate in an elitist claims team that's nicknamed the Cat Team.

Q What was the catastrophe that you were

Vol. R. 10265-34

assigned to?

A It was a catastrophe that had taken place in Pueblo, Colorado in and around August, 1981 that involved a couple of tornadoes and grapefruit-sized hail.

Q Did you observe and/or participate in claims settlement practices as part of that catastrophe team —

A Yes, sir —

Q — that you felt were unfair?

A Yes, sir, I did, and a very large volume of it.

Q Did this, at least to some degree, involve the use of appearance allowance?

A Yes, sir, it did.

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Vol. R. 10265-35

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Q (BY MR. CHRISTENSEN) And Mr. Davis, I should make sure that you understand, you should confine your response to automobile claims, or claims involving some sort of mobile vehicle.

Was appearance allowance used as part of this catastrophe team approach to settlement of claims in the Pueblo, Colorado catastrophe?

A Yes, sir, it was. Along with an admonition to focus on certain groups of individuals in this appearance allowance form of cost per file reduction.

Q Okay. Before we talk about the specifics on appearance allowance, you've mentioned instructions to focus on certain groups. Would you describe what those

instructions were?

A Yes, sir. In a catastrophe scenario, tornado and hail takes everybody out, regardless of their income or status or gender, it's no respecter. It'll take out a whole neighborhood, it doesn't really care what you make, or how much you've got in the bank, or what you drive, or how old you are.

But yet, as those groups would come to us to have their damage compensated, by nature of the contract of insurance they had with State Farm, I received counsel to focus on certain groups more aggressively on

the issue of appearance allowance than others.

Q What were those groups that you were instructed to focus on?

A One of the groups in particular was fixed income, retired age group, and I remember that specifically. I even remember some of the comments that they would make to keep us focused on that style of claims handling.

I remember counsel being received that if someone came with a motor home where the aluminum skin was badly hammered from hail, and they even went so far as to tell us if the motor home had decals of maybe a trout or a salmon or an elk or a deer applied to the side of the motor home, and it appeared to be a well maintained but older motor home, and if the owner of that motor home appeared to have gray hair or no hair, that we were to utilize aggressively appearance allowance.

Q Did you understand why that group was being targeted?

A They outlined that it was a group that, given that time in their life, and maybe their fixed income status they would be more apt to grab a check and run. Also, too, they would be less apt to put the vehicle under repairs, which meant they were going to pocket the

check anyway, in their minds, so there was no harm in low balling these particular groups, and it was discussed on a regular basis.

And I testify the comment about the decals, and whatever, was indeed dialogue every time. Today, even now, when I see a motor home or a camper trailer on the back of a truck or being towed, if it's got the decals it brings back the memory of that counsel that I received. And I found it repugnant.

Q Any other groups that you were instructed to target?

A Outside of the catastrophe team, too, I was counseled to be mindful of those who were financially tight, young couples, recently married, you know, first mortgage, single mothers, those individuals who maybe had been victimized in an automobile accident, their car was damaged, and they themselves, as a victim, didn't have collision coverage with their own company.

So that as they were coming to State Farm, who had insured the person who caused the accident, I was to find out if, indeed, we were their only option. And if that was the case, I was to take advantage of that situation also. Not only on estimatics of their damage, but also in the total loss of the vehicle in the event it wasn't repairable, but also on issues of

providing them a rental car, yes, no, that kind of thing.

Q Okay, let's get back to the issue of appearance allowance, as it was used in the Pueblo catastrophe. What did you observe and/or participate in with respect to the use of appearance allowance which you felt was unfair?

A There are a couple of things that I felt wrong. Number one, there was an active competition that was nurtured and cultivated by State Farm at the catastrophe team that I attended as to how much savings you could generate as an adjuster. And they made it very clear that you were in competition with colleagues like yourself, who were there.

We had to keep records as to how many times we had talked someone into an appearance allowance in lieu of giving them a check equal to the actual damages. And a running tally was kept, and at the end of the ten-day period that tally was compared. Although, because of

the competition, that tally was almost compared sometimes every couple of hours as we'd crisscross, and adjusters who were estimating damage were actually in competition as to how much they could gouge the policy holders of Pueblo, Colorado.

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Vol. R. 10265-43

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Q (BY MR. CHRISTENSEN) When we took a recess for the probate calendar, I was about to have you explain appearance allowance, and how that was a cost savings for State Farm. Using a specific example of a motor home, as you described, what would be a typical estimate to repair hail damage on a motor home? Can you give me a figure?

A Let's say you've got grapefruit hail, and you've got a twenty-footer, it's not a fifth wheel, the average, it doesn't take much, it's aluminum skin, plastic components, $3,000 wouldn't be unreasonable. And keep in mind, whatever the hail didn't get and cause damage, then sometimes the tornado that has a lot of debris, air borne, is throwing it at the side of these vehicles, sometimes in excess of 100 miles an hour.

Q Okay, so if we just picked $3,000 as a figure for an illustration, and what would be a ball park appearance allowance for a motor home like you're

Vol. R. 10265-44

describing?

A If it was the scenario similar to what I described before break, it was a good unit, but maybe not model year, a little bit older unit, and the owner appeared to be in the category, socio economically and age bracket that I described earlier, I would probably start out with appearance allowance in the range of $300, and I would also, to help lock that sale, would offer to replace the components that were obviously damaged, were broken, plastic was on the roof of the unit, or down inside of the unit, having fallen through the vent holes, and then I would also offer what was called a cool seal, which is just a silicone based seal of the top without doing any repairs, just basically seal the top. So it would be $300—

Q $300?

A I would probably start out with an appearance allowance of $300.

Q What would you typically give? Would you normally give a little more than that?

A It was surprising to me how many said, "Fix my vents, give me a cool seal, I'll take 300 bucks, where do I sign?" Many of them, not knowing their options, would say okay. I mean they were coming to the good neighbor. They weren't expecting this game.

Vol. R. 10265-45

Q Okay. So say $300 cash for illustration. What did the cool seal cost?

A I'm trying to remember. They had contracted with local shops, and when I say they, I mean State Farm had contracted with local shops to be able to provide the cool seal application at a reduced rate because of the increased volume. And we were actually giving business cards of local shops that had already been approached by State Farm management who would be willing to provide the cool seal at a price below the market rate, because of State Farm's volume influence.

Q Can you ball park that for us?

A I recall it being somewhere in the neighborhood of 75 bucks.

Q Should we say 100?

A Sure. And then there would be some plastic components, and these are plastic vents that would be, you know, somewhere between, at the time — this is 1981 — you know, ten to twenty bucks a hit. And the average unit would probably have maybe three of those damaged, so you're looking at probably no more than fifty bucks in cracked plastic that needed to be replaced.

Q So should we say 100 bucks for those?

A If you want to be very conservative, yeah.

Q Okay. So the person that accepted the

Vol. R. 10265-46

appearance allowance under our example would end up with a total of $500 in value?

A The estimatics would come out 500 in value, but per your illustration at least 200 was going to the repair

facility, and 300 would go into their pocket. And oftentimes they would have me write an estimate that was representative of the 200, and they would hand them an estimate that they could use at the shop like a purchase order, or sometimes they would just write them a 500 dollar check that was commensurate with the bottom line of the estimate that I'd written.

Q What, under the State Farm policy, what was the policy holder entitled to under our example?

A All a policy holder had to say, or to verbalize, was that he was rejecting my offer of appearance allowance and, "Mr. Davis, simply write me an estimate equal to all my damage and then cut me a check commensurate and equal to the bottom line of your estimate, and I'll be happy."

Q And what would that be under our example?

A Well, it would be 3,000 bucks.

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Vol. R. 10265-47

Q (BY MR. CHRISTENSEN) Did the policy holder actually have to go get the vehicle fixed to be entitled

Vol. R. 10265-48

to this?

A No, sir, they did not.

Q Now, did you tell people, "I can give you this, or you're entitled to this, which do you want?"

A They would not let me say that.

Q Based on your experience, would you expect a policy holder that knew they were entitled to this, to accept this?

A Not anybody I know.

Q Now, we have a difference, here, of $2,500 in our example. Was there, at the Pueblo Cat Team, was there a running score kept of those $2,500 differences?

A Yes, sir, that's correct. . . .

Q (BY MR. CHRISTENSEN) . . . Does this figure represent an amount the policy holder was entitled to but didn't get?

A Yes, sir, that's correct.

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Vol. R. 10265-49

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Q Did someone at State Farm keep track, during this ten days or so that you were at the Pueblo disaster, of each person's shortages?

A They provided us with, actually, a log that had columns on it, and we kept track of a lot of our own performance in that regard, and it was reviewed in the course of the catastrophe team experience, sometimes hourly, sometimes daily. And of course it was discussed among us because we were in competition.

Q How much was your total of these shortages at the end of the — When I say ten days, is that about right? Or am I wrong on that?

A The catastrophe team was operational for ten days in 1981, in August in Pueblo, Colorado.

Q How much was your total of shortages after ten days?

A I did not win the competition, I was number two, with a figure of $110,000 savings, myself personal, over no more than a ten-day period.

Q Do you recall how much the total shortages were of the person that won the competition?

A Yes, sir, I do. He was more than glad to

Vol. R. 10265-50

tell me. He beat me by $30,000 and his figure was $140,000 of shortage during that same time period. I worked beside him every day, we began our day together, we had breakfast together, we had supper together, and he told me what his tally was every day in comparison to mine, and obviously he told me what his tally was at the end of the period.

Q Okay. So the two of you total $250,000. Were you the only two that were participating in this cat team?

A To the best of my recollection there were at least three others that were there on this site where I was. And then there were several others that were freelance into town who were estimating units that were damaged beyond their ability to get to where we were.

Vol. R. 10265-58

Q (BY MR. CHRISTENSEN) Now, is this a review of your PP&R?

A Yes, sir, that's correct. That's one of the forms that were used, that's not the only one.

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Vol. R. 10265-60

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Q Let's move to the last sentence of paragraph 1. "You have not realized any appearance allowance savings since October 1, 1981, and I would challenge you to strive to meet your $100 per month goal for the remaining six months."

Was there a tendency, from what you recall of your State Farm experience, to encourage you to do more, even if you'd exceeded your goal?

Vol. R. 10265-61

A They were never satisfied. And one of the things reflective in that last sentence is, upon my return from the catastrophe team in the tail end of August, I had, and was losing my stomach for playing the appearance allowance shortage game.

Q Okay.

A My figures were dropping.

Q Okay.

A But I was still well above my goal, and they still weren't satisfied.

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Vol. R. 10265-71

Q (BY MR. CHRISTENSEN) I refer you first to the top of the report. Do you see where it says "cost savings report, unit 160"?

A Yes, sir.

* * *

Q And this figure, right here, represents the savings among four claims representatives for the month of January, 1982?

Vol. R. 10265-72

A That's one month's savings for four individuals on the team in this competition.

Q Okay, let's read this paragraph. "Unit 160's total savings increased 30.4 percent in January, 1982, as compared to December, 1981. Improvements were made in all four savings areas. The average savings per

estimator was $5,540.40. Bruce Davis —" I assume that's you?

A Yes, sir.

Q "— made a significant improvement in his savings as compared to his results the last few months, and he is to be congratulated." It goes on to say, "This is by far the best month we have had except July, which was influenced by catastrophe appearance allowance."

Then let's go to the last sentence. "Our combined total savings from September 12, '80 through January 31, 1982," that looks like, what, about a year and three months? "is $234,189.93." Again, did that include the catastrophe savings?

A That document reflects that I'm winning the competition, and from the previous document we know that it excluded my performance in August of 1981. Had my performance in 1981 been included, obviously I'd be off the charts.

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Vol. R. 10265-75

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Q Okay. Let me follow up on an area you alluded to. Were you instructed that certain types of people that you shouldn't try to take advantage of?

A Yes, sir, that's correct.

Q What was your instruction in that regard?

A I was to be cautious in pitching these cost savings shortage endeavors on individuals who had a lot of business with State Farm, or who, at my meeting, gave the appearance that they had sufficient funds that they could create grief for us, either by removing their business, or had sufficient funds to retain counsel on an issue if it became uncomfortable.

I was, and I'm using my own words, I was counselled to prey on the weakest of the herd, and that was some of the groups I talked about earlier in my testimony today, and also other groups of different ethnic persuasion that's different than age group.

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Vol. R. 10265-173

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INEZ P. CAMPBELL

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Vol. R. 10265-174

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DIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10265-181

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Q Now, I want to ask you a few things before I come back to this property. Did Curtis, in his life prior to your marriage with him, have an occasion where he lost a substantial amount of his financial estate?

A He lost it all. He was put out of his home with three children, three pans, and two blankets.

Q About how long ago was that?

* * *

A Probably in about 1971 or two.

Q And when you married him, did he have a lot of assets, other than his home in Richmond?

A He had his home there that was paid for, and he had built it himself, so he paid for it as he went, and then he had his business supplies.

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Vol. R. 10265-182

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Q All right. Tell us a little bit about Curtis before the verdict. Was he one who questioned? Was trusting? Was skeptical? What type of personality was he?

A He's a very, very private man, and that's been one of the things that we've treasured most in our marriage, that we're both very private — We used to be very private people, let me say it that way. We don't have much left that isn't public any more.

And he's a very gentle, very kind, very considerate, very understanding person, and very systematic, very organized. Everything has to be just in its slot.

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Vol. R. 10265-188

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Q Was it your desire to go to court?
A Oh, no.
Q Was it Curtis' desire to go to court?
A No. We've learned why they call them trials.
Q Because they are trials.
A Yes.

* * *

Vol. R. 10265-191

Q . . . Now, let's talk a minute about the verdict. When the verdict came in, I think we all know what that was. Tell me, if you would, what you observed in your husband as that verdict was rendered and as you left the court house.

A I think we were both so much in shock that things just really hadn't registered. We were both just kind of, "What are they saying? What is this really that they're telling us? This can't possibly be, because that's not the way it's going to turn out."

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Vol. R. 10265-193

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Q Over the ensuing months, Inez, could you explain to the jury how your husband reacted to the circumstances of what was happening?

A He was devastated. I think — I think he was more devastated about the fact that it was jeopardizing my property and my security than he was about anything, because he, as he —

As we went into our marriage he had felt like he was giving me more security, like he was helping my life. And now it was going to be gone, and he felt devastated about that.

We spent many, many nights never sleeping, because we were discussing, just discussing the case, discussing what we had, discussing what we would do. But we spent many, many sleepless nights.

Q Was the fear of losing all that you had real? I mean was it something that was real to you and Curtis?

A Wouldn't it be to anybody?

Vol. R. 10265-194

Q Well, I don't know. Counsel for State Farm has suggested it wasn't a significant fear to you. And I want to have you describe, if you would. Was this real?

A Oh, I should say. We had both worked very hard for what we had, and we were approaching those years where you're getting to the point in your life where you hope you don't have to work forever and ever to have money to pay the rent. And it was —

We had a big family between the combination of families. Curtis had eighteen children he was responsible for. And you don't like to see them not ever have one thing, that they're going to have to worry about mom and dad instead of mom and dad worrying about them. Oh, there was just so much involved. It was very emotional.

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Vol. R. 10265-195

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Q How did you feel? We've talked about what you observed with Curtis. How did this excess verdict

Vol. R. 10265-196

affect you personally?

A Well, my main concern was for Curtis. He was struggling with this. He became kind of quiet, even more than he is usually. He's a quiet person as it is. But he even become kind of more withdrawn. I tried to draw him out and talk about it. Like I say, we're very private people, we didn't talk to others about it. We kept it between ourselves, and it was just extremely hard on him.

Q How about you?

A Well, I varied. Sometimes I was so mad at State Farm I could have killed them all, sometimes I thought, "Well, we'll just have to start over, that's all there is to it, and we can do it. We've done it before, we can do it again." And so I vacillated.

But it was very, very hard. It was very difficult. It was very embarrassing, it was the media had it in the paper, it was embarrassing to live in our small community and people say, "Oh, I saw that in the paper about you. That's too bad."

Or else they'd look at you and think, you know, "What kind of dumb people are you?" Or you never knew what they were thinking, but you always thought the worst.

Q Did the effects of what you and your husband

Vol. R. 10265-197

experienced during the period of about a year after the verdict, as far as you understand them, did they continue on, those effects, the emotional effects, and mental effects that you have been describing, did they continue on after the December of 1984 agreement?

A Well, Rich, they're still with us. They've never ceased. I mean it goes just from one phase to another, but I've spent sleepless nights this week, not slept at all because, I don't know, you get rehashing it in your mind.

Maybe other people have nerves of steel, I don't. And you say to yourself, "Turn that off, don't think about it again," but my mind doesn't turn off like that. It just keeps going, blub, blub, blub.

* * *

Vol. R. 10266-4 SALT LAKE CITY, UTAH; JUNE 20, 1996; A.M. SESSION

* * *

GARY T. FYE called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10266-5

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Q . . . Now, I have here in front of us the picture and statement by Robert G. Macherle. We've seen this, and there's been some testimony about it. Would you please explain to the jury where this photograph and this quotation came from?

A That's on about page 25 of the basic claims course, the number one basic claims course at State Farm, and it's the section that's called, "Introduction to State Farm, part 2, Introduction to State Farm."

Q Is this the course that the new claims adjusters attend to learn what their job is?

A Yes, it is.

Q Now, I want to draw your attention to —

A Well, excuse me. They study this material before they go to the home office. This is the material they review while they're in their training period.

Q All right. So it's part of their training.

A It's an orientation sort of course, yeah.

Q All right. Now, as it relates to this particular quote, would you read it again? Can you see it from that angle?

A Yes, I —

Vol. R. 10266-6

* * *

A "Let there be no doubt that our goal is to give the best, most efficient, most profitable service in the industry."

Q Based on your experience, knowledge, and education, is there anything about that quotation which you believe is improper in the insurance industry?

A I do. I think claims services should not be profitable, and that bringing profit into the claim operation is unethical. And it's been a traditional no-no, or taboo in the insurance industry to involve claims handlers in profit and loss issues. Those are issues that belong to other people in the insurance mechanism.

Q Well, is there anything wrong with a company making a profit?

A There's nothing wrong with an insurance company being profitable, it's just wrong to have the adjusters have an interest in that subject as they go about managing the affairs of an insured or a claim.

* * *

Vol. R. 10266-9

Q (BY MR. HUMPHERYS) Please explain why profit is not appropriate, or is unethical in the industry, if profit is introduced into the claims department.

A If you have an adjuster who's serving an insured over here, and he's also serving profit goals, savings plans, non-accommodating attitudes toward claim handling, or a whole variety of other internal company goals, then he has a direct conflict of interest with what he or she is purportedly trying to serve, here. And that's the interest of an insured who has a loss.

And the only way that can be cured is to completely disclose all of these internal goals or plans to the insured, so that the insured is fully informed. And of course, if the insured was informed at point of sale that, instead of, like a good neighbor State Farm is there, like a non-accommodating neighbor State Farm is there, nobody would buy this policy.

In other words, it becomes a switch. You buy one thing, you buy a full-service policy, and you get a self-service policy.

Q All right, thank you. Now, Mr. Fye, I would

Vol. R. 10266-10

like to draw your attention to Mr. Manuel Mendoza. Do you recall who he is?

A Yes, I do. He's a senior claim consultant and lawyer, I believe, at the Bloomington general claims department.

Q Was his deposition taken in this case?
A It was.
Q Back in 1994?
A Yes.

MR. HUMPHERYS: Your Honor, Mr. Mendoza was designated as a 30-B-6 witness, and I believe the jury needs to understand what a 30-B-6 witness is. Could you please explain that?

THE COURT: You can go ahead, counsel.

MR. HUMPHERYS: I'll represent that under the Rules of Civil Procedure in our state, there is a way that you can require a company, or a corporation, to designate a witness to testify in its behalf, since a corporation can only act by and through people.

A request is made under Rule 30-B-6, a company designates a person to speak in its behalf on matters that pertain to the issues in the case, and then that person then represents the company in speaking in its behalf. Did I state that correctly?

THE COURT: It sounds good to me.

Vol. R. 10266-11

MR. HUMPHERYS: All right, thank you.

Q (BY MR. HUMPHERYS) I want to draw your attention, now, to the first page, or excuse me, page 4 of Mr. Mendoza's deposition. Can you see it from there?
A Yes, I can.
Q I asked, "State your name, please."
He says, "Manuel B. Mendoza."

Mr. Hanni then states, "Before you start, you need to know that Mr. Mendoza is the 30-B-6 witness, and he's the one that will also answer with respect to the excess that you're talking about."

Mr. Hanni then further says, "He is the witness we have designated."

And I asked, "In all respects?"

And Mr. Hanni, "To represent the company for all aspects."

A That was my understanding.
Q Did Mr. Mendoza talk about the issue of profit?
A He did.

Q In the claims department? I'd like to draw your attention now to page 312 of this deposition. Let me read the question, and if you'll read the answer, please.
A All right.

Vol. R. 10266-12

Q "In one of the 'Obiter Dictums' — What's an 'Obiter Dictum'?"

A "An 'Obiter Dictum' is a company newsletter issued quarterly. It's been discontinued, but up until 1993, I believe, it was the company's newspaper."

Q "Now, was this picture, here, of Mr. Macherle, and the statement also printed in an 'Obiter Dictum'? Or am I mistaken in making this representation? Or something similar?"

A "I think that language similar to that was, but not the picture, right."

Q "Okay. In one of the "Obiter Dictums" it referred to Mr. Macherle's goal of making the claims operation the most profitable in America. Do you recall that theme, or that statement being presented about five years ago, five to eight years ago?"

A And the answer is, "I recall that some article was in there by Robert Macherle relative to some things such as that, I don't recall any more than that."

Q "And what's your understanding of what it means to have a claim department that's profitable?"

A "I don't know what he meant."

Q "What does it mean to you to have a profitable claim department?"

A "I don't think that's a claim matter, in my

Vol. R. 10266-13

estimation."

Q "Why not?"

A "I think that the — What claim people have to do their jobs —" Excuse me. "What claim people have to do is do their jobs, settle the claims on a fair basis, and dispose of them as quickly as possible. And the profitability of the company has got to be somebody else's problem, and not the claim department's."

Q Is that what you've just explained to the jury?
A Yes, indeed.

Q In your experience, Mr. Fye, did State Farm follow what Mr. Mendoza said about having profit excluded from the claims department?

A No. State Farm has injected a program that brings profit issues clear from the executive offices, right down to where the rubber meets the road, where claims adjusters are handling individual claims. They do it through a program called the PP&R program.

Q All right. I was just going to ask you about the PP&R program. Let me lay a little foundation about the PP&R program.

A Okay.

Q In the course of the years that you have been researching, reading, and educating yourself regarding

Vol. R. 10266-14

State Farm as you described earlier, have you had the occasion to review the manuals regarding the PP&R program of State Farm?

A Yes, I have.

Q Have you reviewed the video transcripts that pertain to that?

A Yes.

Q The training material?

A Yes.

Q Have you reviewed PP&Rs of individuals in the company?

A Hundreds of them.

Q Have they been limited to any particular locality?

A No. The PP&R system is a national system, and the PP&Rs are similar, you know, with minor changes, in every part of the country.

Q Now, basically is a program of setting objectives and trying to meet them, such as the PP&R program, is it inherently evil or good?

A No — Well, inherently a system of setting goals is great. There's no problem with setting goals. You can achieve more when you set goals, I think. And goal setting is a recognized way of doing business in America, and I'm not against goal setting. It's just.

Vol. R. 10266-15

that you can't twist it and make it into something wrong,

I don't feel.

Q Now, in this case, has State Farm produced, pursuant to the Rules of Civil Procedure, PP&Rs of various people in the Mountain States Region?

A Yes.

Q And have they produced various PP&Rs of national, or at least eight states or more, of individuals?

A Yes.

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Vol. R. 10266-19

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Q All right. Now, what I would like to do is have you explain, if you can, and if you've brought anything with us to illustrate it, to learn about how the PP&R program operates within the system of State Farm claims department.

A Well, when we refer to the PP&Rs, these are an annual evaluation system where they set goals, and then at certain periods, quarterly or semiannually,

Vol. R. 10266-20

review them with the employee.

There's a tape that instructs on how this program relates to the claim operation. The tape is about twenty-two minutes long, I think, and I've edited it down to about five minutes, and brought a video tape with me to show just basically what it's about.

MR. HUMPHERYS: Before we show that, I would like to offer into evidence Plaintiff's Exhibit Number 52, which is the PP&R manuals, instructions, and transcripts of the video training material.

Vol. R. 10266-21

Farm?

* * *

Q Okay. Have you found that the PP&R program, as applied in your review of all of these states, not just in these exhibits, but in other cases, are there common themes that you find in all of the PP&R programs throughout the country?

A Yes.

* * *

Q (BY MR. HUMPHERYS) What have you found in regards to your review of the PP&Rs that you've seen throughout the country regarding profit?

A I've found it to be remarkable. It's a device that redirects the focus of the claims operation from the service function —

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Vol. R. 10266-22

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THE WITNESS: It creates an internal cultural value, if you will, in the claims operation, that if you want to get ahead in this company, you achieve outcomes. You keep your eye on outcomes that will make the company profitable, not that will serve the insuring public best.

And I found it universal, throughout the State Farm organization, effective in that the employees are basically reassured constantly that what they're doing is right, and it isn't, and that people within the organization do things that they wouldn't otherwise do to help the company achieve profits because of this program.

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Vol. R. 10266-23

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Q (BY MR. HUMPHERYS) Now, as we look at the video, Mr. Fye, are there certain points in this edited selection that you wish to focus on, so the jury can pay attention to those particular points as they view the video, and what are they?

A Basically three things. One is that these outcomes are related to salary increases and promotions, implying if you want to get ahead you do it this way. The second thing is making the claims employee responsible for organizational goals.

I don't have any problem with personal development and becoming more proficient, and I try to become more proficient all my working life, and I have no quarrel with that whatsoever. It's the emphasis on the organizational goals at the adjuster level that bother me, particularly when those organizational goals involve reducing claim payments without any disclosure to the public.

MR. HUMPHERYS: Your Honor, we would, then, like to show the version of this particular video.

THE COURT: You may proceed.

MR. HUMPHERYS: Thank you. If one of you can kind of raise your hand if it needs to be adjusted a

Vol. R. 10266-24

different way, then let me know.

(The video was played to the jury, a transcript of which appears herein.)

"Hi, I'm Jim Hill, I work at corporate headquarters in the general personnel department. I'd like to take about twenty minutes to discuss PP&Rs with you. Some of what I'll be saying is pretty basic information. Because of that, this tape may be most useful for recently-promoted claim management.

"However, we also think that it can be useful as a review of some of the basic aspects of the PP&R process. We do have a longer education and training program which spends more time on the writing of objectives, and it's available through your regional personnel department.

"Performance Planning and Review is a performance appraisal system. The textbook definition for performance appraisal is the process by which an organization measures and evaluates an individual employee's behavior and accomplishments for a certain time period. Evaluations are typically done annually by the employee's immediate manager. The judgments are then used to make administrative decisions, such as salary increases or promotions. "State Farm's performance appraisal program

Vol. R. 10266-25

is a participative goal-setting process, and the objectives established on PP&Rs play a major role in the evaluation of performance each year.

"In the claims area where you work, three different PP&R forms are used. The general PP&R form is used for all jobs other than claim representative and estimator. The PP&R for claim representatives and the one for estimators are refinements of the PP&R used in other areas. All PP&Rs include both operational and

developmental goals. "Operational goals address region, division, and unit objectives. In the PP&R for claim representatives and the one for estimators, developmental goals are identified from specific job aspects.

"The developmental goals sections of the PP&R for claim representatives looks like this. Under the heading of job aspects are seven competency areas. They are investigations, analysis and evaluation, negotiations, claims development and control, reporting, property damage, and personal effectiveness.

"— how it goes. The first step is to be sure the employee understands what you are trying to accomplish. If you haven't done a PP&R with the employee before, take some time to explain it. This

Vol. R. 10266-26

should include reference to the organizational objectives set in the president's forecast which is released in July or August of each year. "You also need to discuss regional planning activity and the goals of the unit. If the employee is a claim representative, you should also explain how the PP&R is related to promotional consideration.

"There are three basic types of performance appraisal goals. Personality traits, behaviors, and outcomes. Examples of personality trait goals are, 'Have a better attitude,' 'Show more initiative,' 'Develop leadership.'

"Behavioral goals are, 'Respond to customer complaints promptly,' "Organize desk for more efficiency,' 'Present a report clearly and concisely at unit meetings.'

"Outcome goals might include, 'Reduce property damage costs by 10 percent,' 'Increase re-inspections by 25 percent,' 'Increase subrogation receipts by 15 percent.'

"This is a good time to emphasize that the PP&R process is goal oriented, not process oriented. Completion of the PP&R is not our goal, our goal is completion of the objectives listed on the PP&R.

"Now, let's summarize what we've discussed.

Vol. R. 10266-27

PP&R goals should direct the employee's performance so that it contributes to organizational goals and develop the employee to be a more effective performer.

"There are three basic types of performance goals. Personality traits, behaviors, and outcomes. Personality trait goals should be avoided, because they are subjective, ambiguous, and difficult to measure. Goals should include the concept of time and measurability, and goals should be work related and meaningful.

"So there you have it. PP&R, not a complex process, but a very important one which does require thought and attention if it is to work."

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Vol. R. 10266-38

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Q Let me have you look for a moment at an item which was prepared on one of these sheets by

Vol. R. 10266-39

Mr. Kingman. Were you present when Mr. Kingman testified?

A I was.

* * *

Q All right. Do you recall him testifying that State Farm does not emphasize reducing average paid claims?

A I do.

Q And another word for it is average paid costs, and another word is claim severity.

A Right.

Q Did you find that statement accurate in light of the documents which you have reviewed and studied, and that we have here today?

A It's not only inaccurate, it's very inaccurate.

Q All right. Now, so that we can go into the issue and understand it fully, why is it that if a company sets an objective for a claims person to reduce payments, why is that wrong?

* * *

Vol. R. 10266-40

Q (BY MR. HUMPHERYS) To reduce average payments, why is that wrong?

* * *

THE WITNESS: It creates a situation where people will handle a claim to achieve an average, and not handle it on its merits. To get their averages complied with, they'll basically underpay as many people as it takes to make up for the claim that's over the average. And that's cheating. It's unfair.

Q (BY MR. HUMPHERYS) Would — Going back to the video, do you recall the reference by Mr. Hill in the video that there should be, or an example of an outcome-oriented goal could be to reduce the property payment claims?

A Right.

Q Now, that was actually in the video, wasn't it?

A That was actually in the video.

Q All right. Is this an outcome-oriented objective, or goal?

A Absolutely. And that's the type of goal that I've seen throughout these PP&R examples that I've gotten from virtually every state where there's been a State Farm case.

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Vol. R. 10266-44

Q . . . Okay. Now, this is the transcript of the talk by Mr. Macherle to the divisional claims superintendents.

A That's right. And down there at the bottom he's saying, "Especially in relation to the bottom line that I want to talk about, and that is being better than the competition in everyday claim handling. Really what I'm talking about is the loss ratio. Because that's the difference between profit and loss.

"Now, I realize with ten billion dollars in surplus we can handle a lot of acute losses." And if I can digress, acute means recent, basically, in this context, or I'm sure that he probably means larger losses.

And then he goes on to say, "But we can't handle a chronic loss. The chronic loss is the one we don't ever want to get used to. And if our competition settles claims for less money than we do, we stand a good chance of being non-competitive." Do you want me to go on about —

Q Yeah, go down here into the next paragraph and read the sentence that starts, "Now."

A "Now, you all know losses are a function of frequency and severity."

Q Frequency being how many claims are made in a

Vol. R. 10266-45

given year, or time period?

A That's right. That's the number of claims, and severity being the average payment.

* * *

Q . . . All right, now, would you continue on in that portion? A "You can't do a whole lot about the frequency, but severity is strictly in our ball park. That's the one we have to totally worry about."

Q All right, now, explain what that means to an insurance person.

A That means that the focus of this claims operation is average paid claim.

Q The severity?

A That's right. Severity means the average payment to the insuring public.

Q Is he saying that the claims department can alter the outcome of severity?

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Vol. R. 10266-46

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THE WITNESS: The title of this conference was, "The Bottom Line." And the whole issue, here, is the bottom line, meaning the profitability. It's injecting the profit issue right into the claim department.

Q (BY MR. HUMPHERYS) Was this claim department for other departments of State Farm — Excuse me, was this conference given, or were those in attendance outside of the claim department, for the most part? Let me rephrase that. I've had a long night.

Was this training conference for the claims department?

A Yes, it was for, it was called the 1986 divisional claims superintendent's conference.

Q All right. Now, I'd like to go into some of the PP&Rs and show the jury how these objectives are

translated and addressed.

A All right.

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Vol. R. 10266-67

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Q All right. All right, now, you have referred to some from the Singh trial. Are there likewise examples, or similar examples that have been produced in this case?

A Yes, there have been national and Mountain States PP&Rs, and when I reviewed them, preparing to come to Utah, some of the material I had seen before, and had to return at the end of cases, so I didn't have it available to me.

But basically the PP&Rs showed the, at the management level, the emphasis is on profit down through the claim handling operation. So I found the same trends, not like what was said in the court, here, by Mr. Kingman, but I found that there was a preoccupation for average payments.

Q All right. Now, Mr. Fye, remind the jury who Bill Brown is.

A Bill Brown is the divisional claims superintendent who was in charge of the Campbell case. The handling adjuster was Ray Summers, the first line superintendent was Bob Noxon, and then the divisional superintendent, or his boss, was Bill Brown.

Vol. R. 10266-68

* * *

Q All right. Now, with that preface, let's go now to some of the PP&Rs of William Brown, or Bill Brown. Focusing your attention to Exhibit 51, volume 1, trial page 144. We have here, up at the top, his name, William Brown.

A Yes.

Q This is in January of 1983.

A Yes.

Q Now, we don't have all of his PP&Rs, do we?

A No, we don't.

Q They were not provided to us in the earlier years before this time; is that correct?

A That's correct.

Vol. R. 10266-69

Q Okay. Now, this was done in December of, let's see, December of 1982 when this was prepared, but it was for the year 1993; is that your understanding?

A Yes.

MR. CHRISTENSEN: '83.

MR. HUMPHERYS: '83, thank you.

Q (BY MR. HUMPHERYS) All right, now, drawing your attention, here, to paragraph 2, under cost control goals, would you please read A and 1?

A "Cost control goals. Attain 1983 cost goals as per addendum by, 1, holding superintendents accountable for costs for their units, and holding quarterly followup with each superintendent regarding all costs."

Q Now, would Mr. Noxon be the superintendent referred to in paragraph 1?

A Yes.

Q And Noxon was —

A Well, he'd be one of those people.

Q One of them. He was the one that was directly over Ray Summers in the Campbell file?

A Correct.

Q Okay. Okay, I'd like to now draw your attention to the portion of his PP&R that he was referring to, and regarding a schedule. Again, this is

Vol. R. 10266-70

William Brown.

A Yes.

Q 1983.

A Right.

Q And down under the section of 1983 cost goals.

A His goals are paid average loss for coverage A, bodily injury — I can't — Is that a five?

Q $5,250.

A $5,250.

Q And that's what the anticipated goal would be if they were to reduce them, or to contain them, as he said earlier in his PP&R?

A Apparently.

Q Okay. And what is this side of the PP&R over here?

A That's the followup. That's where there are meetings, quarterly or semiannually, where the boss sits down with the person to see whether he's actually on the goal.

Q And this indicates "on goal." What does that mean in terms of his evaluation by his superior?

A That means that the average paid claim for those coverages, A, B, and C, or A, B, and G, pardon me, that would be bodily injury, property damage, and

Vol. R. 10266-71

collision coverage, those averages are right on goal.

Q Ali right. Is A bodily injury at this point in time?

A Yes. Right.

Q I understand there's been some changing, or some confusion regarding what the letters mean. Okay. Now, I'm going to have you look at another part of Mr. Brown's PP&Rs and information provided. Did State Farm produce a personal resume prepared by him?

A Yes, they did.

Q And was that for the purpose of his promotion, or his desired changes within the company?

A Yes, I think it's his reaction to the possibility of promotion.

Q All right. I just want to draw the attention of the jury to his name, William S. Brown, personal resume, January of 1984. Was this contained in State Farm's personnel file, as far as you understand it?

A Yes. I would assume that all these documents produced came from — They don't call it personnel file, they call it a shield. The personnel shield.

Q All right. Now, on page 2 of his resume, I'd like to draw your attention to what he is indicating his most important career accomplishments. Would you please read that first sentence?

Vol. R. 10266-72

A "Over the past three years, I feel that my most important accomplishments have been in developing improved agency management, claims management relationships and cooperation, increasing cost

effectiveness by substantially increasing PPE," which I believe is policies per employee, "by meeting or exceeding nearly every cost-related goal."

Q As you reviewed his PP&Rs, did you determine that, in fact, that was the case, that he did meet his goals regarding the average paid claims and costs?

A He did. And he, as I understand it, was given promotional consideration also.

Q Now I'd like to draw your attention to another portion of his PP&R, this time a little bit later, which came in the form of a memorandum. And this is the same exhibit, trial page number 160. This is a memorandum to, the person has been redacted or blotted out.

A Yes, that's a memo to his boss, basically. When you see the employee talking about his PP&Rs, he's writing a followup to his boss to be reviewed.

Q All right. And the date of this is November 20, 1984.

A Yes.

Q Would you read, now, his comment within the

Vol. R. 10266-73

memo, on paragraph 2.

A Down there, he talks about having a terrible profit picture, and then he says "I'm rather proud of our severity accomplishments, since we did have an 8.3 decrease in bodily injury severity so far throughout 1984." And then he talks about holding increases and other lines, like property damage severity down.

Q And a little lower in the sentence that begins, "Our productivity."

A "Our productivity compares with like divisions and with the company as a whole, and shows that our average cost under the property coverages are much lower than any of our comparative divisions, and much lower than the company as a whole."

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Vol. R. 10266-79

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Q All right. Now, in this process of the PP&Rs, does management give their sponsor evaluation to how a

particular employee is performing?

A Yes, they'll summarize the accomplishments,

Vol. R. 10266-80

and make a recommendation at the end of a PP&R, there's a page or two that is left for a summary by the person's boss.

Q Let me draw your attention to page 230 of the same exhibit. Again, it's Bill Brown, this time it's 1991. And it's entitled "Summary Evaluation at Conclusion of Performance Period." Is that what you're referring to?

A Yes, I am.

Q All right, now, would you please read — Is this prepared by Mr. Brown's supervisor?

A Yes.

Q Okay. Would you please read how he was evaluated?

A It says, "Bill, through his unit, has been very active in supporting our goal of trying more cases to attempt to get control of BI indemnity costs. Bill's results have been very good."

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Vol. R. 10266-82

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Q (BY MR. HUMPHERYS) Now I'd like to have you turn to the PP&R of Grant Cutler. Now, Grant Cutler had

Vol. R. 10266-83

minimal involvement in this case, do you recall, as one of the claim committeemen?

A Actually, so minimal that I saw really little evidence of it.

Q But this is Grant Cutler, here, and it's December of '84. I don't know that we got all of his PP&Rs back that far, but he's a claims superintendent, correct?

A He is. And his — Well, excuse me. A claim superintendent, right.

Q Right. Now, I'd like to have you focus on trial page 384 of this exhibit, which is one of his later pages in his PP&R. Down here at the bottom would you please, under Roman Numeral III, "Cost Control." Read the sentence.

A It says, "Attempt to meet cost and pending goal figures as per the attached unit experience and goal sheet for both units 301 and 311."

Vol. R. 10266-85

* * *

Q Okay, now for average paid on U,

A Is that a U?

Q This is U, it appears to be.

A That's why it's such a high figure. That's uninsured motorist.

Q Okay. And the goal was $6,500 in 1983?

A Right.

Q And how much were they able to save below that?

A These are people that are uninsured motorist claims, these would be first-party injury claims, and they had a goal of over $6,000, and wound up paying just over $5,000 per claim.

Q And what was their goal from for 1984?

A $6,000.

Q And that would be less than their '83 goal?

A Yes.

Q And we can go through the others in the same analysis. Is this a common type of a review that you have found consistent throughout the units and divisions and sections of State Farm?

A Yes. The second line managers all have some

Vol. R. 10266-86

comparative claim data that they use to establish where they are, what they're doing, and to help support whatever action plans they're going to put in, or whatever emphasis they're going to place on a certain line of business.

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Vol. R. 10266-88

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Q Now, I want to draw your attention to some of the PP&Rs in the mountain states. Again, the same exhibit, page number 1,587. This is Jerry Stevenson. Did Mr. Stevenson have some involvement in the Campbell file?

Vol. R. 10266-89

A Yes, he did. He took over the supervision of it from Mr. Noxon at one point.

Q All right. This illustrates both items we've been talking about. But would you just read from here on down?

A Sure. "Maintain A and U," that's bodily injury and uninsured motorists, "costs at below maximum goals of, A, $4,226, and U, $3,000, during 1981 by, A, strive for at least six first-call A or U settlements per quarter, and keep track of these claims."

Q All right. Now, drawing your attention — Let's see, let's make sure we have the date, March of 1981 to March of 1982. And he's being asked to get six first call settlements on both of those coverages?

A Yes.

Q What if there aren't six cases that are appropriate for six, or for first contact settlements?

A If the person is going to meet the goal, then he'll have to add a couple of inappropriate ones to the ones that are appropriate.

And the other side of the coin, of course, is that the people you're meeting with, by definition, if you're an adjuster and you're talking to these injured people, they're not represented by counsel, because you can't talk to them if they're represented by counsel.

Vol. R. 10266-90

So there's an asymmetry of information. That is one person, the adjuster, has all the information about the claims process, the injured person really doesn't have too much information about the claims process, and doesn't have someone kind of on their side explaining the situation. That's why these claim practices start to get predatory, because they take advantage of the gullible and the defenseless people.

* * *

Q Now I'd like to have you look at another section of his PP&R. Under a similar heading. "Monitor unit cost goals."

A "Monitor unit cost goals."

Q Would you please read item number 3.

A "Check with newly represented claimants to find out why they retained attorney."

Vol. R. 10266-91

Q Why would it be important to an adjuster to find out why the claimant went to an attorney?

A Well, it would, they would want to find out if there was something in the claim process that drove someone to an attorney. But of course you realize that this goal is completely unethical. If they have retained an attorney, you are forbidden from doing this. You can't do this. You're not allowed to go to that represented person and make that inquiry.

And what this goal is really designed to do is to try to enter a dialogue with that represented person to make him question the wisdom of getting an attorney.

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Vol. R. 10266-93

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Q . . . Let me ask you this, Mr. Fye. What is the effect of all of these kinds of outcome-oriented objectives that have been promoted through this PP&R program? What is the effect on State Farm?

A Well, it achieves exactly what the president

Vol. R. 10266-94

of the company wants it to achieve. It's hugely profitable. It adds tremendous revenues to the company that they otherwise would pay people who had claims.

Vol. R. 10266-103

* * *

Q What is your understanding regarding whether State Farm keeps any record of punitive damages that are assessed against the company?

A They claim, and have claimed consistently over the years that I've been involved in these cases, that they keep no record whatsoever of punitive damage results or verdicts or cases.

Q Has that been requested in this case, that they produce records of how much in punitive damages they have been —

A It has.

Q And what was their response?

A That they didn't have such a record.

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Vol. R. 10266-104

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Q In your opinion, does State Farm have the capacity, electronically, to keep track of its punitive damages if it chose to do so?

A It has a tremendous capacity to keep track of anything it chooses to do.

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Vol. R. 10266-105

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Q (BY MR. HUMPHERYS) Let me lay some additional information. Have you read testimony from various officers regarding their accounting of punitive damages?

A Yes, I have. Mr. Haines, the claims vice president, Mr. Mendoza, and others.

Q Does that include Mr. Lehman, the executive vice president, or past executive vice president?

A Yes, it did.

Q Do they talk about their accounting and reporting and review of punitive damages against the company?

A They talk about it as if it had no business reason, that they have no business reason to do that at State Farm.

Q Is there evidence that you have read and seen, in the material that you have reviewed, that the corporate president, other executive officers, and the board of directors of State Farm, choose not to review the information regarding punitive damages?

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Vol. R. 10266-106

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THE WITNESS: Well, Mr. Mendoza explained the process of how he handles punitive damage results, and whether the company makes changes as a result of those punitive damage verdicts that are rendered against the company.

Q (BY MR. HUMPHERYS) All right. And let's turn to his deposition, now, page 271, and read Mr.

Mendoza's testimony. Now, he's the Rule 30-B-6 designated expert?

A Yes.

Q Now, what we'll do on this, so that it sounds appropriate, is I'll read the questions, and if you

Vol. R. 10266-107

don't mind being Mr. Mendoza for a few minutes and read his answers.

A All right.

MR. BELNAP: What page are you on?

MR. HUMPHERYS: I'm on page 271. And the following pages. On line 22.

Q Question. "When you have — In those cases where you have seen punitive damages paid, was there any communication with the president's office to describe why punitive damages were assessed?"

A "No."

Q "Did the president's office address any of the problems on which the punitive damages were based?"

A "In any of that I've been involved in, no, I'm not aware of that."

Q Okay, then there were some discussions with counsel. Then, on page 273, question, on line 3. "In any case where you have paid out punitive damages, are you aware of any changes in State Farm's policies or procedures as a result?"

A "I can't recall any. They're usually so unique to a particular case that they don't apply broadly."

Q Now, turning to page 274. My question on line 18, "How about the case in Texas that resulted in a

Vol. R. 10266-108

$100 million punitive damage award? That was under your direction, wasn't it — I shouldn't say that. The BI consultants that you worked with have the Texas region?"

A "Yes, they do."

Q "And that case fell under that region, did it not?"

A "Yes, it did."

Q "Were you aware that there was an allegation of course and conduct in that case?"

A "I don't recall the allegation, but there was —

There was a verdict that was rendered in that case."

Q "Was there any effect—" Or excuse me, "Was there any effort from general claims to analyze the merits of any course and conduct claim, to your knowledge?"

A "Not at this point, no."

Q "Do you know whether there has been any discussion or intention expressed to modify or change State Farm's claim handling as a result of any case which awarded punitive damages?"

A "Broad, across-the-country change, is that what you're talking about?"

Q "Well, let's start with that."

A "No, I'm not aware of that."

Vol. R. 10266-109

Q "How about regionally?"

A "No, I'm not aware of that."

Q "How about divisionally?"

A "I don't know of that."

Q "So the answer would be you know of none?"

A "No, that's right."

Q Mr. Fye, based on your review of the testimony of various people at State Farm, and reviewing their internal documents and manuals and other things which you have reviewed, can you describe for us how State Farm handles cases against it for excess exposure, or extra contractual claims, and for punitive damages? How does it account for that, and how does it address those? If you'd like to use the board, you're welcome to.

A I will. I'll make this very fast. If you start with a claims unit, that's where the claim activity will be generated, where the punitive damage behavior starts, and where the case will be tried.

Above that is a level that I'll just label as divisional and sectional. State Farm has two different terms they use, divisions and sections. And that's where the divisional level supervision is.

Above that is a regional office where the, there's an operational head of the claim activity. But

Vol. R. 10266-110

in terms of line authority for claims handling, we go to general claims, and that's where this Mr. Mendoza

resides occupationally. General claims is essentially the home office claim department.

And like in the case of the Postma versus State Farm in Ft. Worth, Texas that was $100 million in punitive damages, the information, he's saying he's saying, stopped right there. And where it would go if the company wanted to do something about it, would be to the next level, which would be the executive office, where Mr. Rust and Mr. Forsino and others who are in charge of State Farm reside, and then, of course, on top of that, is the board of directors.

Instead of this information being compiled in usable form, and being given to the board of directors to tell management and tell everybody on down the line to stop this behavior, there's a wall put up right here.

Q Now, you've had a chance to review Roger Lehman's deposition taken in Bloomington about a month and a half ago, haven't you?

A Yes, but please refresh my memory.

Q All right, I'll be kind.

A Thank you.

Q I'd like to refer to the deposition of Roger Lehman. First of all, can you tell us who he was for

Vol. R. 10266-111

many, many years before he retired a couple of years ago?

A Well, Mr. Lehman was a senior executive vice president. A true insider in the operation of the State Farm companies. The State Farm companies have basically had two families in the presidency, the Macherle family, Bob Macherle's grandfather founded the company, the fellow in the picture, here, the poster person, and then the Rust family took over, and Adelei Rust, Ed Rust, Senior, and then Ed Rust, Junior took the company over in 1985. Mr. Lehman was one of his top lieutenants.

Q All right. Now, I'd like to show on the overhead his testimony beginning on page 85.

A And where are you reading?

Q Starting line 5.

A All right.

Q I will ask the question, if you would please read his answer.

A Okay.

Q "Are you familiar — Let me back up. In your experience in the corporate office over claims, to what extent are payments of punitive damages accounted for in any report or other compilation of data to you as a vice president in the president's office?"

A "Well, there were none, because we don't keep

Vol. R. 10266-112

records of those specifically."

Q "Would the same be true of punitive damages?"

A "The same would be true of punitive damages."

Q To your knowledge, Mr. Fye, in reading all of the testimony of these various State Farm employees, has State Farm ever changed what you consider, and have given opinions regarding, improper claims handling as a result of any punitive damage award against it?

A No. It's been the same from when I started, and it's the same now. It's been disguised at times, but it has not been changed.

Q Do you have an opinion why State Farm does not change its practices?

A It is hugely profitable to do this.

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Vol. R. 10266-124

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Q (BY MR. HUMPHERYS) Mr. Fye, regarding number 7, and the historical files of the Auto Claims Manual, Claims Superintendent's Manual, and the Excess Liability Handbook, do you recall testimony being given by one of the home office employees of State Farm regarding the existence of historical files?

A Yes, I do.

Q And can you recall who that was that gave that testimony?

A It seems to me that Tracy Moredock and Mark Wells gave testimony about that to some extent.

Q And was it, approximately what time period was it that this testimony was given regarding the historical files on the manuals?

A Oh, also Dan Barringer, the company's archivist gave testimony about that.

Q All right.

A This was all within the last sixty days, ninety days.

* * *

Q And was there also one of his subordinates

Vol. R. 10266-125

that testified regarding the existence of these historical files?

A I don't recall —

Q Mr. Comella? Does that ring —

A Francis Comella, pardon me, that's right. He testified, I've read a two-volume deposition from that case, that's correct.

Q And that was approximately what time period?

A It seems to me that it was in 1985 to '87, in that area.

* * *

Q Has State Farm in this case indicated that some historical files were destroyed?

A Yes, at various times they've indicated that. They've also indicated, in some of that testimony, that historical files of the manuals were kept in the education and training division. It's been conflicting testimony.

Q Now, Mr. Fye, you mentioned Mr. Barringer.

Vol. R. 10266-126

Who is Mr. Barringer?

A He was, until recently, State Farm's archivist in charge of keeping historical documents.

Q To your knowledge, was his deposition taken in this case?

A Yes.

Q And was a computer printout of all of the things that he had stored in his archive department produced?

A It was.

Q Were historical files contained on that index?

A Yes, they were.

Q Were there things that were non-manual?

A Yes, there were photographs, company news magazines, various brochures and things from the past.

Q Do you recall an entry regarding a band aid box?

A Yes. A lot of artifacts and advertising material, trinkets.

Q Has State Farm continued to gather these kinds of artifacts and stored them in the archive department?

A Yeah, as far as I know.

Q Have they stored their prior manuals?

Vol. R. 10266-127

A They've not stored their prior manuals, to my knowledge. Certainly not in that department. The list didn't contain any significant number of historical claims manuals.

* * *

Vol. R. 10267-4 SALT LAKE CITY, UTAH; JUNE 21, 1996; A.M. SESSION

* * *

GARY T. FYE the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

MR. BELNAP: Good morning, Your Honor, good morning.

CROSS EXAMINATION BY MR. BELNAP:

* * *

Vol. R. 10267-10

Q Mr. Fye, yesterday you talked to this jury about a case that happened in Texas. Do you remember the name of that case?

A It's called Poston, P-O-S-T-O-N, versus State Farm.

Q Now, Mr. Fye, can you tell this jury what the difference is between a case where a verdict may be rendered by a jury, and a judgment? Let me start those backwards.

A Sure.

Q Is there any decision in a case that is final and of effect until a judgment is actually signed and entered by a judge in a case?

A No, technically there's a gap in time when the jury renders its verdict, then there's a period of

Vol. R. 10267-11

time where the parties file motions and ask things of the judge, of the court, and finally a final judgment is entered. They're two separate stages of the case.

Q Now, Mr. Fye, as you represented to this jury yesterday, and used the name of that case, by name, Mr. Fye, you know that that case did not result in a judgment, don't you?

A I don't know.

Q Mr. Fye, do you claim, even though you named that case by name, are you now claiming you don't have knowledge of that case?

A Oh, I have knowledge of the case. I don't know what the state of the verdict was.

Q All right. So if I tell you, Mr. Fye —

A Well, I know what the state of the verdict was. I don't know whether it was signed as a judgment.

Q Excuse me. If I tell you, Mr. Fye, that there was no judgment in that case, would you dispute that?

A No, the case was settled after the verdict.

Q You're aware of that.

A I am aware of that.

Q Okay. And so as you told this jury to represent that there was a $100 million result in that case, that is absolutely not the truth as to the resolution of that case; isn't it true, Mr. Fye?

Vol. R. 10267-12

A Mr. Belnap, you're straining my credulity, here.

Q I'm not straining anything. That is, to represent to this jury that there was a $100 million payout, or result in that case, is absolutely not the truth, isn't it, Mr. Fye? That just calls for a yes or no.

A It would be wrong to represent that there was a $100 million payout. It is absolutely correct that there was a $100 million punitive damage verdict.

Q The fact of the matter is, Mr. Fye, is that that case was resolved for a mere fraction, and that there was never a judgment entered; isn't that true?

A I am under a confidentiality restriction, Mr. Belnap, and I feel very uncomfortable making a comment one way or the other about it.

Q All right. But Mr. Fye, yesterday you represented

to this jury, in an effort to inflame them on a case that has nothing to do with the Campbell case —

A Mr. Belnap —

Q — that there was a $100 million result. Didn't you do that, Mr. Fye?

MR. HUMPHERYS: Your Honor, we object, because there was a settlement that was under a

Vol. R. 10267-13

confidential gag order. And for him now to be questioning the results of the settlement after that case is improper, when Mr. Fye was duty-bound by reason of that settlement agreement that he cannot talk about it. And it's improper for Mr. Belnap, and that settlement was at the request of State Farm.

MR. BELNAP: That is absolutely false, Your Honor. The plaintiff in that case requested that there be a confidential agreement. And if we've got to bring that person up here we will, because that is the most —

MR. HUMPHERYS: It's irrelevant because he can't talk about it because of the confidential provision of that agreement. And that's what's improper about the line of questioning.

MR. BELNAP: That is also incorrect, Your Honor. Because the agreement says if there are allegations made in litigation that are untrue, that this can be gone into.

THE COURT: Well, counsel, perhaps we ought to examine the record, but I thought his testimony was there was a $100 million verdict.

MR. BELNAP: No, he said a $100 million award, is what he said.

MR. CHRISTENSEN: Isn't that the same?

THE WITNESS: Isn't that the same as a

Vol. R. 10267-14

verdict?

THE COURT: Why don't we clarify the record as to what he said? If you felt — I mean I think you've raised the issue, and I think it's fair examination, but just go through and examine him on what he thought he was saying.

MR. BELNAP: I agree it's fair examination. Thank

you, Your Honor.

Q (BY MR. BELNAP) Mr. Fye, are you telling this jury that the plaintiff's attorney in the Poston case —

A It's pronounced "Poston."

Q — Poston case, did not request and demand that that settlement be confidential?

A I don't know. I've never seen the actual paper work that was involved in that. So I —

Q So you would not dispute that fact, Mr. Fye?

A No, I can't dispute any document that you might have about that. I guess there's only one thing I can dispute.

Q And I'm not interested in that, because there's not a question pending.

A I know.

Q I realize you have opinions, and you've stated those, but it's my turn now.

Vol. R. 10267-15

A Okay.

Q Thank you.

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Vol. R. 10267-53

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(The jury left the courtroom.)

* * *

THE COURT: We're back on the record, the jury has not been brought before the court, to conduct a conference. Yes?

MR. HUMPHERYS: Your Honor, we just requested to receive a copy of that agreement in the Poston case that Mr. Belnap represented some of the terms in, and I

Vol. R. 10267-54

think even, I'm not sure he actually quoted or read from it, but he represented some of the terms and asked questions about it. We consider that a waiver of whatever agreement that they have, and it's improper for him to do that without giving us a copy, and he has just indicated he refuses to give us the copy.

MR. BELNAP: I indicated, Judge, that I wanted to discuss this with you, and to see if it's appropriate. This is a release agreement that I have a copy of, and the release provides that no judgment was entered in the case. It goes on to provide, in the confidentiality section, that the confidentiality —

Let me just read it, "The dollar amount of the settlement paid to the plaintiffs shall remain confidential between the parties and their attorneys." That is the confidentiality agreement. Its goes on to provide other terms with respect to that confidentiality.

But I did not introduce this document into evidence, I did not put it up and show it to the jury. I do not have a problem in showing this to counsel if the court orders us to do so, but I do not want to have it alleged at a later time that we have violated this agreement, which I don't believe we have in any respect, by referring to the case which was brought up by them

Vol. R. 10267-55

yesterday.

But if the court would like to direct me to give a copy to Mr. Humpherys, I would be happy to do so, if that's the court's direction.

THE COURT: I think, since it was raised, he at least

ought to have the opportunity to review it in conducting their redirect examination. I will so direct, based on the record that's been made.

MR. BELNAP: And the other thing is, Your Honor, they have a transcript that Mr. Humpherys apparently made that they want to refer to, that refers to the jury's answers to special verdict interrogatories. The case was never reduced to a judgment, I think it's totally improper to have even had that case mentioned in this proceeding, Your Honor. And I think the testimony of Mr. Fye ought to be stricken on that.

THE COURT: Are you talking the Singh case?

MR. BELNAP: I'm talking about this Poston case. Never reduced to a judgment, it was resolved at the stage where there were pending motions for a new trial, et cetera. And to refer to it as some precedential matter I think is highly prejudicial, and that his testimony ought to be stricken. It's absolutely uncontroverted that there was never a

Vol. R. 10267-56

judgment in that case.

MR. HUMPHERYS: The issue of whether there's a judgment is irrelevant. We raised the case for the purpose of demonstrating that State Farm refuses to change its course and practices that have been found as improper, deceptive, and illegal, despite large and significant findings by a jury and an award.

Mr. Belnap is suggesting that somehow Mr. Fye raised the Poston case. It was raised by Mr. Mendoza in his testimony, and we raised it for the purpose of demonstrating that State Farm does not alter or change its directions when a court or a jury finds them in bad faith and improper.

It goes to the issue in Crookston regarding what amount, or a consideration of what amount will stop State Farm from engaging in these kinds of activities. Mr. Belnap has chosen to go into this for the purpose of demonstrating, somehow, that the award was, or that State Farm paid less than what the award was. That was not our contention, and so I'm not quite sure how he —

He raises the windmill and then jousts at it. That's not a basis for eliminating the testimony. I don't know what more to say than that.

MR. CHRISTENSEN: Your Honor, I've got one other concern. He not only attacked the witness and

Vol. R. 10267-57

suggested he'd lied about his representations of what happened in Texas, he did it in a very loud voice. And in fairness, now that the very strong inference has been made that there was a misrepresentation, we're at least entitled to point out that, in fact, that was what did happen, there was a verdict.

Counsel also suggests that because it wasn't reduced to a judgment it didn't happen. It wasn't reduced to a judgment because it was settled. Now, if it had been set aside by the court, or there had been a judicial determination, that would be different. But there was a jury verdict that was never set aside, and they have accused this witness of misrepresentation, and it's only fair we get to point out it was, in fact, as represented.

MR. BELNAP: Can I complete the record on this, Your Honor?

THE COURT: You may.

MR. BELNAP: The implication from the testimony which they brought up is that State Farm paid $100 million, and has never learned a lesson from it. But I think, more importantly, for the purposes of the rulings on this case, the Poston case was an uninsured motorist case in a situation where a vehicle that was insured by State Farm had been hit by a truck down in

Vol. R. 10267-58

Texas. It resulted in the deaths of two of the people in the car, and suit was brought against the trucking company, and a settlement was entered into against the trucking company, or a verdict, I'm not certain, where they paid their entire limits of a million dollars.

In Texas, there was a question at that time whether or not if you had received an amount of money that was in excess of your own insurance policy, whether or not that brought into play your own uninsured motorist coverage on your own policy. State Farm took the

position that since they had been compensated by the trucking company, there was not a basis to pay uninsured motorist in that case.

It was not a pattern or practice case, as this case was. It was simply a first-party uninsured motorist case, where the issue was allowed to go to the jury as to damages that State Farm should pay or shouldn't pay under the uninsured motorist coverage of the policy, and the jury made the decision that they did.

And we think, Your Honor, under 403, and the other cases that we've cited, given the posture of this case as not being a judgment, it was obviously settled, our hands are tied in terms of being able to talk about the amount. But to leave that impression for the jury

Vol. R. 10267-59

for the reason they're tendering it is highly prejudicial and should not be allowed.

THE COURT: I think we can go on for a long time on this, and I appreciate comments that are made.

In many ways we're trying to close the barn door after the horse has got out. Those precise facts have not been brought to the court's attention previously, and it seems to me to be certainly something that could well have been gone into with Mr. Fye as a way of attacking the inference he was drawing, or at least was being drawn from that case.

I went back and found the dialogue from the testimony, and I think what he said, he didn't say the amount had been paid, and he didn't say award, and he didn't say verdict. He said there was, he said punitive damages of $100 million, whatever the inference from that is. And I'm sure you've all looked at that same examination, and I don't have the kind of mind that allows me to quote it exactly.

But as I reviewed it, I thought that the examination clarifying what had actually happened in the case was fair examination. I think it's something that could be asked. But I think that, you know, we have gone far enough in that case where it seems to me that the testimony that was being given on punitive damages

Vol. R. 10267-60

is not, in my mind, vitiated entirely by the fact that there's not a judgment rendered. I think there's still probative value in that.

I think that the probative value is certainly clarified to some extent by an examination of what the facts are and what had happened. I don't think there's any question that Mr. Belnap's cross examination made clear that, on the record, that the fact that there was a verdict, but that there was no judgment, and that the settlement was pennies on a dollar, I think that's what was said, and I don't think that there's any question about that. And I think that that serves to assist the clarification that I believe that the defendant would want.

But I believe at this point, sort of to say, "Well, I'm going to strike that in the record and to take it out," now that we've gone this far, is unfair to the plaintiffs, who addressed the issue of the punitive damage case before the court on the 19th of June. And without a full exposition of what the facts of the case were, we concluded that it was not inappropriate to allow testimony on it, and then testimony proceeded.

So I'm not going to strike the testimony. I will allow plaintiffs to review the agreement, and if they — I think that if there's a confidentiality order

Vol. R. 10267-61

that would not be appropriate to bring in how much — I don't want to order the breach of that part of it, the dollar amount that you've mentioned, Mr. Belnap, but I think that it is at this point fair game in this case, and some examination can be engaged in to try to precisely put up what happened.

Now, I always feel like juries are more intelligent, and more thoughtful in understanding matters than sometimes given credit under the rules that are invoked to prevent information being provided to them, and believe that the rules properly interpreted here would allow a jury to examine the information. But what I am interested in is the jury gets the full facts before it.

So I don't have a problem with examination which allows that to the point that we can do so short of the breach of an agreement, which I don't see any point in

allowing. So I hope that clarifies where I'm at on it. I would, frankly, not think that this trial ought to engage in a great deal more time on that case. I think, just so it's clear, I think, because of the fact that we have gone into this to some degree, I would not have a problem with Mr. Humpherys raising some clarifying questions, and I wouldn't have a problem, either, with Mr. Belnap clarifying what the facts are in

Vol. R. 10267-62

the case that would tend to, in your mind, create less relevance to State Farm in terms of the issues that Mr. Fye was suggesting than would otherwise, as you've suggested, from what you've just told me about.

So I'll allow some limited recross on that issue to clarify what the facts are of the case, if Mr. Humpherys doesn't go into the facts in his redirect so that that fact can be brought to the jury, and they can weigh it appropriately.

MR. BELNAP: And certainly, though, Your Honor, in good faith, and as representatives of the court, we all know that $100 million was not paid. If there is an implication, again, hammering that fact that they got hit with $100 million, it hasn't even dented their practices, then it's a misstatement and a mischaracterization that should not be allowed to be argued.

THE COURT: I understand. What we have is a verdict that was $100 million, but no judgment, or settlement was pennies on the dollar. That's now on the record before the jury, and I certainly wouldn't expect Mr. Humpherys is going to try to create an impression different than that, because it's the fact.

And I'm also allowing further examination that the facts of this case are different than this, as

Vol. R. 10267-63

well. And I think it's fair to have that before the jury, and I believe it is.

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Vol. R. 10267-67

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REDIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10267-73

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Q Now, has it been your experience that State Farm destroys these documents which are adverse to their position?

A They do.

Q And has that been a program which has been, you have seen throughout the entire company?

A And throughout the entire time period we're talking about, here.

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Vol. R. 10267-74

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Q (BY MR. HUMPHERYS) All right. Do these documents which describe State Farm's destruction policies indicate anything about why they are destroying them, as it relates to these kinds of bad faith cases?

A Yes. The document from here in Utah in 1990 says that they're destroyed so that they won't be produced in litigation against the company.

Q Does it refer to bad faith claims specifically?

A Bad faith claims. In one of the California documents there's a comment that they don't want to write anything down for fear that it'll come back and haunt the company in future litigation over the way claims are being handled.

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Vol. R. 10267-89

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Q All right, now I'd like to turn our attention to the PP&R issue that was addressed by Mr. Belnap. Do you recall that he had made as an exhibit a memorandum dated September 12, 1994? That was not shown to the jury, but it was read. Let me put that up on the screen.

* * *

Q (BY MR. HUMPHERYS) . . . Now, the date of this memorandum is September 12, 1994.

A Right.

Q Now, he read to us the fact that State Farm was acknowledging that, having a reduced average paid as a goal under the PP&R program was inappropriate.

A Yes, they're saying it's wrong.

Q And they are suggesting that that should no longer be done.

A That's correct.

Vol. R. 10267-90

Q Now, Mr. Fye, in your mind, as you read that, does that indicate that since the PP&R program was instigated in 1979, and the references to reducing average paid claims, what does that indicate to you of the fifteen or so years that they did have average paid claims as a goal?

A It's an acknowledgment that it was wrong.

Q For the fifteen-year period they were doing it?

A That's right.

Q Now, did you — Have they submitted other documentation acknowledging the same thing, that that was an inappropriate goal-setting device?

A Yes, we've talked about that, Mr. Belnap and I, too, about the 1992 PP&R manual where they gave an example of setting claim reduction goals as being wrong. I think they used the word "wrong" in that context.

Q Now, I'd like to turn to Exhibit 52, which is already into evidence. I just want to show a particular page that has what you have indicated. Let me just have you lay foundation for the 1979 PP&R manual. Did State Farm produce this, to your knowledge?

A Yes.

Q No, let me — Why don't you find Exhibit 42. They're in a book, there, and it's not fair to ask you

Vol. R. 10267-91

questions until you've got that.

A But they did produce a book of PP&R manuals.

Q Prior to producing it in this case — No, I'm talking about the '79 manual.

A Oh, excuse me. Oh, no, the '79 manual, State Farm didn't produce that.

Q Who produced it?

A John Crowe did.

Q Is that the first time that you had ever seen this manual, in all of the State Farm cases you've been involved in?

A Yes, indeed.

Q And was that 1979 manual an issue in prior bad faith cases that you have been involved in?

A A request for it was, yes.

Q And did State Farm ever produce it in those cases?

A No, they never did.

Q All right. Now, I'd like to have you turn, if you would, to trial page 20 from this manual. Now, just give the jury a little bit of counsel, or excuse me, explanation about this manual, and what purpose it serves, and who it was distributed to, based on your knowledge and information.

A This manual sets out the purposes of the

Vol. R. 10267-92

program, you know, to get the individuals working for the organizational goals and so forth, and how to administer the program. And then this particular page is part of a glossary of examples of what you can write on a PP&R form.

Q And that's what job performance objectives means?

A Right.

Q Now, I want to draw your attention to — Well, why don't you just explain, where in here does it refer to that goal of reducing average paid claims?

A Well, just above the middle perforation, there, it says, "Hold BI paid cost to," blank, "or less, for the year."

Q And is there a reference here to the same effect, "Maintain average paid PIP cost at," blank number, "or less through," year?

A Where are you pointing? Yes, maintain average, PIP is the so-called no-fault or personal injury protection.

Q Are there other references?

A Yes, it talks about property damage somewhere down toward the bottom, it talks about appearance allowances.

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Vol. R. 10267-93

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Q There's one here just above, "Hold collision paid costs"?

A Right, at the perforation, "Hold collision paid cost increase to 8.7 percent."

Q Has it been your experience in the training manual, the videos, and so forth, that there are references to the claim reduction goals as set forth in the manuals?

A Yes, and it was in the tape the jury saw also.

Q All right. Now, just for a moment, because Mr. Belnap asked you the question, based on this memorandum that, in 1994, that said, "We're going to discontinue this activity"?

A Yes.

Q Has State Farm discontinued that activity of placing reduction goals?

A No, they have not discontinued the activity.

Q And do you have evidence of that?

A I do.

Q Now, let me refer you now to some of the PP&Rs that were provided to us on a national level, that is the divisional claims managers, and I'm just going to

Vol. R. 10267-94

go through these as quickly as we can to save time.

Let's see, the national PP&Rs are Exhibit 50. And I will use the Bates stamp numbers, the first one is Bates stamp 03232. Now, are all of these we're going to look at after 1994?

A Yes, they are.

Q Are some of them even in 1996?

A Yes.

* * *

Q All right. Now, I want to draw your attention down here to the BI, it indicates here, and now would you read the sentence immediately below the columns of numbers?

Vol. R. 10267-95

A "This is a review of the average paid losses and these categories that are listed there, bodily injury — "

Q Average paid losses?

A "Average paid loss, property damage, personal injury protection, uninsured motorist collision all have increases," and the next sentence says, "The combination of this increased severity," which also means everything, "and increasing frequency produces a significant underwriting loss, which must be reversed."

Q Let me go into another one. Bates stamp 03228. I draw your attention now to the sentence that starts, "East Texas." Would you read that?

A This is from December 15th, 1994. After this memo, it says, "East Texas auto and consolidated claims will contribute to the financial stability of State Farm by achieving a goal of 3 percent adjusted operating profit and through managed growth. Some activities in this area will be maintenance of our PPE level, strong expense management, especially in areas such as telephone expense, et cetera."

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Vol. R. 10267-96

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THE WITNESS: Okay, this is from February of 1995, it's the Dallas Metro Auto.

Q (BY MR. HUMPHERYS) All right, now, the second page —

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Vol. R. 10267-100

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Q Okay. Let me have you now address your attention to Bates stamp 03986. A PP&R which is dated January 25, 1995.

A Right.

Q Would you please read to the jury number 3.

A "Achieve an operating profit of 3 percent or greater in Buckeye." It's a profit goal in the claim department.

Q All right, and under "Communications," would you start here where it says, "Our section."

A "Our section heads will attend a unit meeting in each unit during first quarter to discuss division goals,

State Farm 2,000 change, divisional standards/accountability, profitability, answer questions, et cetera."

Q The next, Bates stamp 03982, as part of a 1996 PP&R goal.

A Yes.

Q This is dated January 19, 1996.

A Right.

Q Under management, would you please read the first sentence.

A "The need for personal accountability has

Vol. R. 10267-101

never been greater. We will improve our PP&R and goal-setting process to provide for greater objective performance monitoring. Documentation of job performance, positive or negative, for all employees, will be imperative. We continue to use our mission statement to judge performance, et cetera."

Q And then again, referring to the profit?

A "We will achieve a 3 percent operating profit in Buckeye division."

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Vol. R. 10267-102

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Q Now, Mr. Fye, have you — Do you have an opinion whether State Farm has discontinued the use of interjecting profit into the claims handling process through the PP&R program?

A They've not discontinued the use of that.

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Vol. R. 10267-109

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Q Now, I'd like to, finally, draw your attention to the Poston case, which was referred to.

A All right.

Q Mr. Belnap indicated that there had been no judgment rendered on the verdict.

A That's correct.

Q And that is correct.

A Yes.

Q Now, have you had a chance to review the actual transcript of the judge at the time the verdict was rendered?

A Yes.

Q Was there, in fact, a verdict for $100 million rendered against State Farm?

A Yes.

Q Were they found guilty of bad faith in that case?

A Yes.

Vol. R. 10267-110

Q And did the jury find that State Farm's conduct was done knowingly?

A If you're reading from it, I'll accept that. I don't remember the exact text.

MR. BELNAP: Your Honor, can the record reflect our objection to this, that we discussed with the court?

THE COURT: It may.

Q (BY MR. HUMPHERYS) This is a certified copy of the court's record, signed by the official court reporter, on May 13, 1996. That is she signed it, certifying in 1996.

A Okay.

Q And it's an official record in the Texas court, reading of the jury verdict, December 10, 1993. Okay, now, first of all, was State Farm found to have engaged in unfair and deceptive act or practice?

A Yes.

Q And did this jury find that they did it knowingly?

A It said willingly, knowingly, right. Oh, that's right, knowingly.

Q And the judge — Why don't you read what the judge said as he was reading the verdict.

A "Thirteen, inquired as to exemplar damages,

Vol. R. 10267-111

and I believe I've counted all the zeros folks, and if this adds up right, that's $100 million."

Q Now, Mr. Belnap represented that there was a settlement after that.

A Yes, he did.

Q And he represented that it was settled for what he referred to as a few cents on the dollar. Was that

settlement agreement made confidential?

A Yes.

Q And what does it mean when there's a settlement that's confidential?

A It forbids the discussion of it. It disappears, more or less, from people's discourse about it.

Q Now, when we read the testimony from Manuel Mendoza regarding that case, and I asked him, "Did that result in any change in any of kind of course and conduct of State Farm?"

And he said, "No, it didn't on the national level, no on the regional level, no at the divisional level, and so on"?

A Right.

Q Are you aware, now, Mr. Fye, of any change in State Farm's procedures, practices, policies, as you have described them to this jury, despite that

Vol. R. 10267-112

memorandum of December of 1994 that we just looked at, are you aware of any changes in the policy of introducing, using and incorporating the profit motive in their claims department?

A No, I'm not.

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RECROSS EXAMINATION BY MR. BELNAP:

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Vol. R. 10267-121

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Q Okay, thank you. One final area, Mr. Fye, on the Poston case.

A All right.

Q In that case, Mr. Fye, that was handled in Texas; is that your understanding?

A Tarrant County, which is Ft. Worth.

Vol. R. 10267-122

Q In that case, Mr. Fye, a family had been involved in an accident and were hit by a truck; isn't that right?

A Yes, and —

Q And they sued —

A The wife and daughter were killed.

Q And they sued the truck that hit them, didn't

they?

A I think so.

Q And they received a, either a verdict, or a substantial settlement for the limits of that truck's policy of a million dollars; isn't that true?

A I don't know that that's true.

Q Are you saying you don't know the facts enough to answer that question?

A That's true, I didn't review the facts of the case before I came up.

Q That was a first-party case, wasn't it, Mr. Fye?

A Right. It was under the under-insured or uninsured motorist coverage.

Q Are you aware that in the state of Texas, at or around the time of this case, there had been a question where, if a settlement had already been received that was in an amount more than the uninsured

Vol. R. 10267-123

motorist, that the uninsured motorist payments may not be required to be paid?

A Are you referring to a contest over whether there was an offset provision that negated the coverage?

Q No, I'm referring to whether or not you're aware, under Texas law at or around that time, that there had been some law, prior to this case, at some time, that if there had been a settlement already reached, more than the limits of the uninsured motorist, that it was not necessary to pay from that policy?

A In other words, an offset provision.

Q Whatever you want to call it. Are you aware or not aware of that law?

A I'm going to have to say I'm not aware enough of that law to discuss it intelligently today.

Q Okay.

A I've been aware of it in the past.

Q There was no judgment entered in that case; isn't that true, Mr. Fye?

A That's right, just a verdict.

THE COURT: Thank you, Mr. Fye.

Vol. R. 10267-125

V. RAY SUMMERS called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q Have you spent most of your adult life in the Cache County area?

A Just the past thirty-five years.

Q And generally speaking, have you worked for State Farm for a period of those thirty-five years?

A Yes, I did.

Vol. R. 10267-126

Q During, for what period of time were you an employee of State Farm?

A For nearly twenty years.

Q Approximately what time period?

A It would have been from 1963, on through to 1982.

Q And during that time period when you worked for State Farm, what position did you hold?

A I was a claims specialist assigned to bodily injury and property claims, and for a period of time I was involved in fire claims, as well.

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Vol. R. 10267-128

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Q All right. Now, I'd like to ask you, were you assigned by State Farm to handle the Campbell claims, or the claims associated with the Campbell accident?

A Yes, sir, I was.

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Vol. R. 10267-130

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Q . . . When were you assigned to work on the Campbell file?

A As I recall, the first assignment came on the 17th of July, 1981.

Q And generally what did you do when you received word of the accident and the possible claims?

A Well, the fact that there was an identification of a fatality involved with the accident, there was also the identification that there was counsel already involved with the case, I made a phone call to my superintendent, Mr. Noxon, who was in Ogden, our office was in Logan. I apprised him of the initial report, and identified that I was in the process of opening the file and investigating the accident.

Q Typically speaking, as an adjuster, do you commence research to try and find out where the parties' fault would be, in determining whether a case should be settled or not?

A Yes, sir.

Q All right. And did you proceed in a normal

Vol. R. 10267-131

fashion to perform your discovery?

A I did.

Q And did you initially obtain a police report, a two-page police report?

A Yes, I did.

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Vol. R. 10267-133

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Q . . . Now, do you initially prepare what's called a BI preliminary report with your findings?

A Yes, sir.

Q And did you prepare one in this case?

A I did.

Q I want to show what's previously been entered into, or introduced into evidence as Exhibit 7, Bates stamp 400003, and have you look now at your BI preliminary report. Is this the report you just referred to?

A It appears to be, sir.

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Vol. R. 10267-134

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Q All right. Now, would you please read to the jury your description, or brief facts of the accident.

A "Allegedly, the named insured driver, going north on US 89-91 —"

Q Who is the named insured?

A Curtis Campbell.

Q All right, go ahead.

A "— passed a line of several vehicles also northbound on US 89-91. Apparently had to cut into the lane of traffic due to the approaching southbound claimant, 1, vehicle."

Q And who is claimant number 1?

A That was Mr. Ospital.

Q All right, you've got him listed right here as number 1.

A Yes, sir.

Q Okay, go ahead.

A "Which vehicle, because of the hazard, pulled to the right, hit a soft shoulder, lost control, traveled across center, and hit claimant number 2 head on, no contact with the insured vehicle."

Q And claimant number 2 is Robert Slusher?

A Yes, sir.

Q Now, had you reached an initial opinion

Vol. R. 10267-135

regarding fault at the time you prepared this report?

A Yes, I formed a basic opinion as to the involvement of the accident.

Q All right. And at this early stage, tell us, were you finding, in your mind, or evaluating any fault on the part of Mr. Campbell?

A Yes, I felt that there was negligence that was manifest, in that there was an apparent critical curve, and an effort to avoid a head-on collision with Mr. Campbell, wherein Mr. Ospital swerved to avoid that head-on collision.

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Vol. R. 10267-136

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Q Okay. Now, as part of your responsibilities, did you prepare a report, now, to your superintendent?

A Yes, sir.

Q And what is that report called?

A It's called a CLR, or a combined liability report.

Q Is that a lengthy report where you compile all of the information that you have?

A Yes, sir, it is.

Q And about how many pages was it?

A I would say perhaps about fifteen or twenty pages.

Q Single space most of the way?

A Yes, sir.

Vol. R. 10267-137

Q Typewritten.

A Yes, sir.

Q And the purpose of this report was what?

A To apprise the company, and specifically the superintendent handling and administering the file, of the facts of the involvement, and the exposures that were apparent, and from that, his effort to assign a reserve if the file had an exposure, and if not, then to advise me as to what other course of action would be required.

Q As part of that report, did you make a determination and evaluation of fault?

A I did.

Q And tell us what your findings were at the time you prepared the CLR.

A My findings were that there was comparative negligence imputable to Mr. Campbell, and that there was apparent negligence also involving the Ospital vehicle.

Q Now, if there was any negligence assessed to Mr. Campbell at all, would that, then, make him liable? What is your understanding whether or not that would make him liable for the full damages that may be claimed?

A I realized, with the effect of a fatality, and the ensuing severe injuries that the driver of the

Vol. R. 10267-138

second car received, yes, we had a liability exposure, and there was definitely cause for consideration.

* * *

Q All right. Now, you've described that you found that there was evidence of fault on the part of Mr. Campbell, that there was exposure on his part, and

Vol. R. 10267-139

there was evidence of fault on Mr. Ospital. Did you send that report in, now, to your superintendent?

A I did.

Q Now, does that report also go to anyone else?

A Yes, sir.

Q Who would also receive a copy of that report?

A The divisional claims superintendent, Mr. Brown.

Q And your immediate supervisor was Mr. Noxon?

A Yes, sir.

Q Why would it have gone clear up to the divisional level?

A Because of the nature of the exposure, fatality, and of the high probability of a high settlement value.

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Vol. R. 10267-228

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Q (BY MR. HUMPHERYS) Did you have any involvement regarding, any involvement with anyone at State Farm regarding average paid claims?

A Yes.

Q And would you explain to the jury what type of involvement you had, or how that played in your work as an adjuster?

A Each year we had a performance evaluation to see if we were up to standard in the company's eye, and thereby worthy of maybe a pay increase, so we had these performance reviews. And in those reviews they would categorize every claim type that we had, the number of pendings under bodily injury, under property damage, under those that were with files with attorneys, those that were under PIP files, or personal injury protection.

And if you had a certain number in those, as compared to last year's ratios, you had to set a goal and say, "Okay, I will cut those down."

And then the supervisor would say, "You get it down 20 percent, as a goal."

Well, those were often unrealistic, trying as

Vol. R. 10267-229

we were, because claim frequency and severity was constantly increasing. And so it was always a matter of pressure to perform, and perform basically as to the

dictates of the company, rather than propriety of the insureds and the claimants involved.

Q How did this influence you, as you were trying to settle claims?

A I felt great anxiety of doing it as fast as I could to please my superintendent.

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Vol. R. 10267-233

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Q All right, now, Mr. Summers, were there many people that you dealt with as an adjuster in settling your claims, where you paid less, in your opinion, than fair value?

A In the majority of the instances.

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Vol. R. 10267-234

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Q (BY MR. HUMPHERYS) Are there many people who you deceived, as you've described, who, even today, don't know that they were deceived and defrauded, using your term?

A Yes.

* * *

Vol. R. 10268-195

FELIX E. JENSEN called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

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Q Are you currently employed?

A I am.

Q For whom?

A State Farm.

Q For how long have you been employed at State Farm?

Vol. R. 10268-196

A I've been employed for about thirty-three years.

* * *

Q And during the time period you've been working for State Farm the last thirty-three years, have you been primarily involved in the settling of claims?

A Yes.

Q You haven't worked your way into management very much, have you?

A No. Just for about a thirteen-month period of time in 1972, when I was an office manager of a small claims office in Murray, Utah.

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Vol. R. 10268-203

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Q Now, I would like to draw your attention to the time period in the mid-eighties when Mr. Noxon

Vol. R. 10268-204

became a divisional claim superintendent. You recall that time period?

A Oh, yes.

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Vol. R. 10268-205

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Q All right. Was there a period of time that you were aware that Mr. Noxon was refusing to give her certain authority on files?

A Yes.

Q Was that happening very often?

A Quite frequently.

Q Did that become a concern to you and other members of your unit?

A It became a great concern to my unit because we couldn't get any claims settled.

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Vol. R. 10268-207

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Q And were there times, Mr. Felix, when Mr. Noxon would request that you change your evaluation of claims?

A Yes.

Q Did that happen very often during this period of time?

A Quite often.

Q And so do we understand what was going on, if we had a serious claim that, say, had a reasonable value of $30,000, that would require you to submit a request to your superintendent, correct?

A That's correct.

Q And then she would submit the request to Bob Noxon; is that correct?

A That's correct.

Vol. R. 10268-208

Q Now, that would be often in the form of a written request for authority, correct?

A Always a written request.

Q And when Mr. Noxon would tell you that your evaluation was too high, would he then ask you to change that?

A He would not tell me. He would write a note on my request for authority, return it to Samantha Bird and she would tell me.

Vol. R. 10268-209

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Q Starting on line 6 I asked you, "In terms of

Vol. R. 10268-210

dealing with the claim files, were any of the internal documents, do you ever recall him modifying or changing documents to suit his purpose?" Your answer?

A "All the time." What I told you is, I told you how he would write notes on my request for authority, advising Samantha Bird to tell me to change my evaluation of a given claim.

Q And he would become furious when you would refuse, or Sam Bird would refuse?

A Absolutely.

Q He would become — What do you mean when you say "furious"?

A Obnoxious. Verbally abusive. To her, not to me.

Vol. R. 10268-214

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Q (BY MR. HUMPHERYS) Now, wasn't it a common knowledge among the adjusters that you don't write certain things in the file? Certain derogatory things in the file?

A Yes.

Q And isn't it true that whenever there was a conflict, like you're describing between your evaluation and Noxon's evaluation, that that would not go in the file, the conflict over that?

A No, it would go on notes.

Q And those notes would not become part of the permanent file, would they?

A That's correct.

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Vol. R. 10269-4 SALT LAKE CITY, UTAH; JUNE 26, 1996; A.M. SESSION

* * *

FELIX E. JENSEN the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10269-13

Q During this period of time that you talked about last night when Mr. Noxon would refuse to give her authority to settle claims, or that he would substantially decrease what was authorized on the claim, do you remember being concerned enough to talk to John

Martin about that?

A Yes.

Q Now, tell the jury who John Martin is.

A John Martin at that time would be what's referred to as the divisional claim manager over the Utah division, which would mean that he would be in charge of all of Utah claims operations, including, I believe, the fire company at that time.

Q And he, would that be part of a regional position?

A Yes, in Greeley, Colorado.

Q And that's where he resided?

A That's correct.

Q Do you recall explaining to him the problems you were having getting authority from Mr. Noxon?

A Yes, I did.

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Vol. R. 10269-15

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Q (BY MR. HUMPHERYS) What did he tell you?

A I told Mr. Martin that — Mr. Noxon's one of my memorable failures in my State Farm career. I trained Mr. Noxon when he first came to Utah from Illinois, and he wanted to become a bodily injury adjuster. And I have to take the responsibility, because I did, in fact, train him into that position. And in my opinion I didn't do a very good job.

But nevertheless, he was the divisional claims superintendent, and when we had the difficulties, as we talked about yesterday, I approached his boss, John Martin, and requested a conference with Mr. Martin, for Mr. Martin to come to, I believe the Sandy office, where I worked at that particular point in time.

Mr. Martin did, in fact, come to the Sandy office, I had a conference with Mr. Martin, I told him

Vol. R. 10269-16

that the situation between Ms. Bird and Mr. Noxon was becoming one, an intolerable situation, not from just a personal point of view, but from a claim point of view. The unit was not functioning, in my opinion, as the claim unit should function. I worked with some very capable, intelligent, and honest people. And we were

just not able to do the job that we wanted to do.

Mr. Martin replied, "If you cannot take the fire, you have to get out of the kitchen."

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Vol. R. 10269-18

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Q I'll read the question. "What I'm saying is, have you sensed any pressure or influence or incentive on the superintendent that pertains to the loss ratio or average paid out on claims?" And your answer?

A "Oh, sure." . . .

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Vol. R. 10269-57

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REDIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10269-71

Q (BY MR. HUMPHERYS) Aren't PP&Rs a form of addressing what you ought to be doing?

A Yes.

Q Trying to influence you to achieve certain objectives?

A Yes.

Q And certainly salaries and bonuses and

Vol. R. 10269-72

promotions and so forth, they're tied into how well you do on your PP&R, aren't they?

A Yes.

* * *

Q (BY MR. HUMPHERYS) You recall in your PP&Rs having an objective set by the superintendent for you to assist in achieving the goal of having the costs contained?

A Yes.

* * *

Vol. R. 10269-75

* * *

INA MAY DeLONG called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified

Vol. R. 10269-76

as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q Are you a former employee of State Farm?

A Yes, I am.

Q Let me cover with you the time you spent at State Farm. Approximately how many years total were you associated with State Farm Insurance?

A A little over twenty-three. I was employed by the regional office for more than twenty-two, and I worked for an agent for a little over a year.

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Vol. R. 10269-79

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Q During that period of time where you worked with the State Farm agent, did you get involved in handling claims for fire and auto, life and health?

A Fire and auto, not life and health.

Q And you had some direct involvement in that?

A Yes. Very direct.

Q After that period with the agent, what was your next position with State Farm?

A I went back to the company, to the regional office, into the claims department in the fire and casualty company.

Q The regional office was where?

A At that time it was in Rohnert Park, that's north of San Francisco, up by Santa Rosa.

Q Now, as you worked there, were you working in claims?

A Yes, I was.

Q For how long did you work in claims at State Farm?

Vol. R. 10269-80

A I was in the claims department until August 31st of 1990. I went back in 1981, and was there for about nine years.

Q There in the same physical facility with you, were there people with State Farm Auto that worked close by?

A As close as I am to you, yes, or closer.

Q Did you interact with them on a daily basis?

A Yes, I did.

Q Did you observe them handling claims?

A Yes, I did.

Q Did you discuss claims handling with them?

A Yes.

Q Did you go to lunch with them?

A Yes.

Q From time to time would you consult with the people there with State Farm Auto in the handling of claims?

A Well, consult, share stories, complain. There was a lot of communication between fire claims and auto claims.

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Vol. R. 10269-81

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Q Did you serve on some catastrophe teams?

A Yes, I did.

Q Approximately how many?

A I believe there were six.

Q Different parts of the country?

A Yes.

Q Were those teams made up of claims people from both State Farm Fire and State Farm Auto?

A That's correct, yes.

Q Did you supervise some of those teams?

A I supervised in the Loma Prieta earthquake in 1989, and I supervised both fire and auto personnel.

Q Was there a time when you made the decision to leave State Farm?

A Yes, I did.

Q And when was that?

A August 31st of 1990.

Q Why did you leave State Farm?

A In protest of the way that claims were

Vol. R. 10269-82

handled by State Farm.

Q And did you do something to try to deal with that?

A Yes, I did.

Q What did you do?

A Well, I took documents from the company and went to the newspaper and exposed what was going on within State Farm.

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Vol. R. 10269-84

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Q I'd like to discuss with you some awards that you've received. Have you received any awards from the California senate?

A Yes.

Q And what is that?

A Woman Of The Year for 1994.

Q Have you received any consumer advocate awards?

A Yes, I got Consumer Advocate Of The Year for California for 1995.

* * *

Q Have you appeared on various national television programs to try to assist consumers with

Vol. R. 10269-85

insurance concerns?

A Yes, I have.

Q And what have you done in that regard?

A I was on 60 Minutes in 1993, I've been on Good Morning, America, Peter Jennings, Charles Currault. I think those are all of the TV programs, the major TV programs. I've been on a lot of local and state TV and radio talk shows, appeared in some way in most major newspaper publications.

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Vol. R. 10269-92

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Q (BY MR. CHRISTENSEN) While you were at the fire company, did you become familiar over those years with the philosophies and methods handled by the fire

company?

A Yes.

Q Or used by the fire company in handling claims?

A Yes, I did.

Q Including numerous claim schools?

A Yes.

Q Did your training involve non-written, verbal instruction from various supervisors and management people over the years?

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Vol. R. 10269-93

THE WITNESS: Frequently it was unwritten.

Q (BY MR. CHRISTENSEN) And based on all the things that we've talked about, do you know whether many of those same philosophies and methods are used in the fire company, or excuse me, in the auto company in the handling of claims?

A Yes, they are.

Q Now, in answering the questions I'm going to be asking you, I'm going to request that you limit your answers to philosophies or methods that are either used by the auto company, or the fire and auto company both. If it's strictly fire, then don't talk about that.

A Okay.

* * *

Vol. R. 10269-94

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Q Now, you've indicated one of the things that's promised when an insurance policy's sold is peace of mind?

A That is the product that's sold. That's the promise, that you'll have peace of mind, that if anything happens to you they're going to take care of

Vol. R. 10269-95

you.

Q Based on all of your background and knowledge, have you found that State Farm delivers on that promise?

* * *

THE WITNESS: State Farm has in place a plan to not deliver on that promise.

Q (BY MR. CHRISTENSEN) Would you explain that, please.

A Well, they have programs in place —

* * *

THE WITNESS: — that come down from the very top, the president of the company, instructing them to cut indemnity cost.

Q (BY MR. CHRISTENSEN) Is that another term for reducing average pay per claim?

A That's correct, the indemnity is the money that you get for your claim.

Q Okay.

A And that comes down from the president. So when the adjuster has to watch what their average paid claim is, and they're instructed in ways to decrease

Vol. R. 10269-96

that average paid claim, and their promotions and their pay increases are based on whether or not you keep your average claim to either what it was the year before, or maybe a percentage less than it was the year before, there's no way that, as an adjuster, I can even focus on what it is that you're really entitled to. What was promised to you when you paid that premium. But I have to focus on what the company is making me do.

THE COURT: Counsel, follow that up with some foundation.

MR. CHRISTENSEN: Okay.

Q (BY MR. CHRISTENSEN) Did you actually experience that during your years at State Farm?

A Yes, I did.

* * *

Q (BY MR. CHRISTENSEN) All right. Based on your knowledge of the auto company, and I've been through a fairly long list of that, and your interaction with people there, are you aware that that same situation takes place in auto claims?

A Yes, it does.

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Vol. R. 10269-98

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Q Would State Farm periodically audit claim files to check for overpayments or underpayments on claims?

A Yes. Well, kind of, yes.

Q Would you explain that, please.

A Well, in all of the audits that I have been involved in, seeing times that I've been audited, I have never seen one that addressed underpayments. Only overpayments.

Q Have you ever been reprimanded for an overpayment?

A Yes, frequently.

Q Ever reprimanded for an underpayment?

Vol. R. 10269-99

A No, I was promoted.

Q Did State Farm — And again, did this — I want you to only answer this if it applied to both fire and auto, or to just auto — does State Farm have philosophies and methods to gain the trust of claimants?

A Yes.

Q Were those methods used to try to pay less per claim?

A Yes.

Q Did you use some of those methods yourself?

A Unfortunately, yes.

Q Do they work?

A Extremely well. Like you wouldn't believe.

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Vol. R. 10269-100

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Q Were you pressured by management to pay people less than fair value?

A Yes.

Q Were you rewarded and commended when you did?

A When I paid them less, yes.

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Vol. R. 10269-102

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Q All right. Let me move on. Does the claims handling training at State Farm emphasize paying claims, or denying claims?

A Denying claims. That's what most of the training is all about, is how to deny a claim, and the wording that you need to use to deny it and protect yourself, should you be wrong, or should you have not completed enough of an investigation, so that your denial is really proper.

Q All right, let me move to another subject. Are people, in handling claims at State Farm, taught to look for vulnerable claimants?

A Yes.

* * *

Q (BY MR. CHRISTENSEN) Based — and again, I want you to confine your answer to methods, policies that are apply to both fire and auto claims handling, or

Vol. R. 10269-103

to auto only. With that background — Let me move this way.

Maybe I can do this more quickly.

* * *

Please explain what training you got, as far as looking for weaknesses in claimants, if any?

A Well, the way that we are instructed by State Farm is that there are certain ways that you can go about paying less on a claim than they're really entitled to. And the types of people that might be more willing to accept that lower offer than others. So we would be —

We had training in how to identify people, not only whether or not they would accept it, but if they fought it, and that litigation ensued because of that. Whether or not we would be in a position to beat them.

Q Okay. Before we move to that, let me ask you this. What kinds of groups were suggested in training that may be vulnerable to accept less than value on a claim?

Vol. R. 10269-104

A Minorities, people that have a speech, a language problem was always a good one to target, senior citizens, females, people that maybe have some kind of chaos in their life to where they just can't deal with fighting over a claims issue. Maybe a severe injury, an automobile accident.

These people that have been particularly, had their life upset because of the incident that led to this claim anyway.

Q Okay. Let me ask you. You've mentioned women. What do you mean by women?

A Well, me. Females.

Q Have you been able to determine whether State Farm pays women less, in general, than men on claims?

A Yes.

Q And what is that?

A Well, in documents — I'm not sure how to answer this because of the directive about the auto.

Q Okay. All right, that deals with earthquake claims?

A Yes.

Q All right, I won't get into that. Has it been your experience that people who trust the State Farm adjuster get less?

A Yes.

* * *

Vol. R. 10269-107

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Q Were you provided information which was applicable to both the fire and auto claims handling on statistics of how many people who are underpaid actually discover it and pursue it?

A Well, State Farm's numbers were that only 2

Vol. R. 10269-108

out of 10 would actually come back and try to get more on their claim. That 8 out of 10 will accept what the company gives them.

Q Did they provide any numbers of those that come back on claims that feel like they were entitled to more, how many will actually, then, file a lawsuit?

A Well, a lot of that 20 percent will actually get the right amount paid to them once they come back with their experts and say, "Hey, I know I'm entitled to more." But of the ones that actually have a dispute, it was State Farm's number that 1 in 100 that had a serious disagreement with State Farm would actually proceed to get an attorney and file a lawsuit.

Q Did State Farm provide you numbers of how many that file lawsuits actually make it to a trial?

A Yes, that 1 in 100 that filed a lawsuit would then make it to a trial. So we knew that even if they were really upset, only one out of 10,000 would ever see a courtroom.

Q The context that that was taught you in was what?

A "So what if they're upset? We can beat them, eventually we'll beat them. We can wear them down, or we can use the system against them. We have more money. We have attorneys that we pay hourly rates to that will

Vol. R. 10269-109

defend our conduct."

Q Were you instructed that whatever your conduct was, the company would defend it?

A We knew they would defend it. I was never, ever reprimanded for anything other than overpaying a claim.

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Vol. R. 10269-115

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Q (BY MR. CHRISTENSEN) Ms. DeLong, I'm going to show you page 10 of Exhibit 121-P, and I'm going to refer to the last paragraph on that. I think I asked another witness about this. Let me read that to you. It says, "Most of us consider our income, our debts, our domestic problems, how we spend our money, whether we are keeping up another woman, and things of that nature, to be very personal. We don't like other people asking us questions about these things, and under normal circumstances, we don't go around asking other people those questions.

"However, when we are faced with what we think is a fraudulent claim, or where a punitive damage count is in a lawsuit, these matters become extremely important to the successful defense of that claim."

The next paragraph says, "If the insured is paying the expenses of keeping some woman in an

Vol. R. 10269-116

apartment, that may be extremely personal business, especially if he is married. But if he submits a claim to us, or charges that we are guilty of conduct for which we should be punished, it's also our business."

Ms. DeLong, is that an accurate reflection of State Farm's philosophy as results, relates to dealing with people who make charges against, and accusations against State Farm of wrongful conduct?

A Well, it's definitely the way they do business when there are charges brought against them. But that's the kind of conduct that they actually start much earlier than even charges being brought against them.

Q Have you personally been the subject of some of this kind of conduct by State Farm? And let me preface that, you've been an outspoken critic of State Farm the last few years.

A Yes.

Q Have you personally experienced harassment and abuses from State Farm directed at you?

A Yes.

* * *

Vol. R. 10269-117

CROSS EXAMINATION BY MR. CRANDALL:

* * *

Q . . . Has your vendetta against State Farm existed ever since they told you you were being investigated for the conflict of interest?

A Well, I'm not really aware that I have a vendetta against State Farm. But my difficulty with State Farm started long before there was any word of an investigation.

Q And you understand you're not here as an expert witness. You're here as a fact witness?

A Well, that is correct, but I'm also a bit confused, since my documents were subpoenaed. But it's my understanding I'm a fact witness, yes.

Vol. R. 10269-118

Q And so what you're here to do is make a lot of wild accusations without any documentary proof.

A Well, I don't think they're wild at all. I spent most of my adult life with that company.

* * *

Q In fact, you're just a disgruntled ex-employee with a grudge, aren't you? You really have it in for State Farm.

A Absolutely not.

Q When we look at your career with State Farm, it wasn't a very successful and productive career, was it?

Vol. R. 10269-119

A I guess it would all depend on what your idea of success was, but I thought it was very successful. I was very happy with my career at State Farm.

Q You never, in your entire career, were promoted into management, were you?

A I never was, but that isn't my idea of success.

* * *

Vol. R. 10269-125

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Q And do you think that the testimony that you've given across the country against State Farm has been sincere? Or is it just the ramblings of a mad woman, who was mad about the way you left the company?

A I haven't seen myself as a mad woman that was rambling.

Q You are mad at State Farm, aren't you?

A "Mad" isn't a word I would use on it. I'm very unhappy at the way State Farm does business.

Q You have used that word, "mad," isn't that true, in sworn testimony? You have said you are mad at State Farm.

A Possibly. I wouldn't deny that I've ever used that word.

Q And, in fact, when you went to the department of insurance in Texas, and they cut you off from talking about State Farm, you came back with a gag.

A Yes, I did.

Q So you've been very dramatic in your efforts

Vol. R. 10269-126

to tell the world that State Farm is an evil empire; isn't that true?

A Well, I'm not near as dramatic as you are, sir, but I did come back with a gag, yes.

Q And, in fact, the department of insurance in Texas didn't levy any sanctions against State Farm, did it?

A I haven't talked to the department of insurance, I don't know.

Q Well, you've talked to the department of insurance in the state of California, and you filed formal complaints with them, haven't you?

A I filed a complaint, yes.

Q And, in fact, the department of insurance did not levy any sanctions against State Farm after investigating; isn't that true?

A I don't know that an investigation was ever done. Which might prove an earlier point.

Q As a result of your complaint there have been no formal action taken against State Farm, isn't that true?

A I have not asked them. I don't know that. All I can do is make the complaint. What the department chooses to do is up to the department.

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Vol. R. 10269-147

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Q So in your twenty-three years with State Farm, approximately, you rose to the level of a claim specialist? Is that what you were when you left?

Vol. R. 10269-148

A That's correct, the highest level that I held was a disaster claim supervisor.

* * *

Vol. R. 10269-149

* * *

Q Now, your resume also says that you helped create a video to train people.

A Yes.

Q But isn't it true that that video you made was not authorized by State Farm, and, in fact, they withdrew it?

A Well, that's not totally correct, but that's the story that State Farm tells now, yes.

Q But, in fact, State Farm has a video-making department at home office in Bloomington, don't they?

A Yes, they do.

* * *

Vol. R. 10269-163

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Q (MR. CRANDALL) Let me ask you about your crusade against State Farm. The reason you left State Farm was because State Farm was investigating you for a conflict of interest with a contractor; isn't that true?

A That's absolutely not true. Totally not true.

Q You resigned August 31st, 1990?

A Yes.

Q Isn't it true that you were told before you resigned that you were under investigation because of a potential conflict of interest with a general contractor who was working on the earthquake?

A I wasn't real clear what the allegations were, but when I resigned I did my exit interview with the deputy regional vice president, who assured me that that investigation had been concluded, and they found

Vol. R. 10269-164

nothing, which is exactly what I told them they would find. It was not only concluded, but it was closed, and wasn't even raised again until after I went to the newspaper and got a front page article.

MR. CRANDALL: Your Honor, I'd like to refer to the deposition, page 112.

* * *

Q (MR. CRANDALL) You were told before you resigned that you were being investigated.

* * *

Q (MR. CRANDALL) Isn't that true?

A Yes, uh-huh.

Q And the reason for the investigation was that it was alleged you were taking favors from a contractor who was doing business with the company.

A That was my understanding. I never saw the

Vol. R. 10269-165

letter or any — He was never even interviewed in that investigation.

Q And State Farm, by the way, required that you sign every year a conflict of interest statement; isn't that true?

A There was a form that we signed, yes.

Q And I think we have it right here with us. You got mad when State Farm started an investigation, didn't you?

A I told State Farm they could investigate all they wanted. That wasn't what I was mad at State Farm about. I was mad at State Farm for leaving people in unsafe homes because they trusted State Farm.

Q Do you recall testimony in the Walter, David Walter case about being angry over the investigation?

A I don't recall that. I'm not denying it.

Q So you were angry over the investigation?

A I was angry over the situation surrounding the investigation.

* * *

Vol. R. 10269-166

Q And this document says, "It's a policy of this company that no officers, directors, or employees should use their position or knowledge gained therein in such a manner that a conflict between the company's interests and their personal interests arise. Both the fact and the appearance of the conflicting interests are to be avoided."

You knew that to be the company policy?

A Yes, I signed that.

Q And it also said, "All officers, directors, employees, and the members of their immediate families should avoid the receipt of payments, gifts, entertainment, or other favors which go beyond common courtesies usually associated with accepted business practice and thereby might be regarded as placing them under some obligation to a third party dealing or desiring to deal with the company."

A Yes.

Q So you were aware of that.

A Yes, uh-huh.

Q Now —

A I signed that.

Q And you signed it.

A I did, yes.

Q And, in fact, after signing this, isn't it

Vol. R. 10269-167

true that you accepted a color television set from a Mr. Roy Taylor, a contractor, who was bidding for business to repair homes from the earthquake?

A I accepted a color TV from a contractor in Santa Cruz, yes.

Q And that was Mr. Roy Taylor?

A That's correct, yes.

Q And you would agree that even the appearance of a conflict of interest should be avoided under your conflict of interest laws.

A That's right. Even if there was no conflict, if you do nothing wrong but someone thinks that it looks like you might have, even if they investigate you and find that you did nothing, the fact that they thought it might look like it, it's still a conflict.

Q And it would be a conflict to promote that the company do business with somebody who's a friend, or who has given you a gift.

A That's true, yeah.

Q And isn't it true that when you made that video tape to train the claims people, you had Roy Taylor be in that video tape?

A He was one of several, yes.

Q And isn't it true that you got upset when the company withdrew that video tape?

Vol. R. 10269-168

A I got upset over the way that they withdrew it, and the fact that they had no training program for earthquake to replace it. That's why I made it in the first place.

Q Now, you would agree that it could be wrong to accept gratuities from a contractor who's doing business with your company.

A It could, depending on what the reasons were.

Q Now, isn't it also true that you had Mr. Taylor, who was with Mountain View Builders, added to State Farm's approved list of contractors?

A I don't think I was the one that had him added. He was on the list, but I think Mr. Villama was responsible for that.

Q But he got added to the list after you met him.

A That's correct, yes.

Q And isn't it also true that you threw a birthday party for Mr. Taylor?

A For him, among others, yes.

Q And you threw that birthday party for him at his apartment.

A He had a condominium, yes.

Q And that was a surprise birthday party.

A Yes, it was. He knew nothing about it.

Vol. R. 10269-169

Q Now, your policy also says that if you find, "If they find they have a financial interest or outside relationship which might involve a conflict of interest, they should immediately make all the facts known to their supervisors and be guided by the instructions they receive."

Isn't it true that you didn't report the fact that Mr. Taylor had given you a television set, the fact that you had thrown him a surprise party, the fact that you had been shopping together, the fact that he had driven you to the scene to inspect a damaged house —

MR. CHRISTENSEN: I'm going to object to this as a speech. It's a compound question, and it's a rambling speech.

* * *

Q (MR. CRANDALL) I'm trying to watch the time, here. Isn't it true you didn't tell your supervisors he gave you a color television set?

A I didn't tell them.

Q And isn't it true that you didn't tell your supervisors that you drove together in his truck to the scene to inspect a damaged house from the earthquake?

A That is not an uncommon occurrence, due to

Vol. R. 10269-170

the severity of the damage after the earthquake, that's true. But they knew it.

Q Isn't it true you didn't report to your supervisors this outside relationship where you were giving him a party?

A I didn't, no.

Q And wasn't that a violation of the conflict of interest rules?

A Well, it would depend.

Q Isn't it true that you had a party at your hotel room at the Capitola Inn, and you invited Mr. Taylor, among others, to that?

A I usually had a dinner at my hotel room, but it wasn't a room, it was an apartment at the hotel. I lived there for six and a half months. And every week I tried to do something for anybody that was there from out of town that didn't have any place else to go.

Q And Mr. Taylor was there from out of town, from Santa Cruz?

A Mr. Taylor was there from Las Vegas. We were in Santa Cruz.

Q Isn't it true that when you got ill during this earthquake disaster program, that it was Mr. Taylor who took you to the hospital?

A That is true, yes.

Vol. R. 10269-171

Q And isn't it also true that after you resigned from State Farm, on August 30, or 31st, 1990, within eight days you went to Denver and opened up a business with Mr. Taylor?

A That is correct, yes.

Q And your deal with Mr. Taylor — I don't mean to demean it by saying "deal" — your contract, or your agreement was that you'd share in the profits if you were to get him some business for his construction company.

A That was one of the probabilities, yes.

Q Now — And by the way, you were unable to get him business, and that relationship ended.

A No, that's not true.

Q Well, you moved back to California, didn't you?

A Well, we did get business, but I spent most of my time helping policy holders get their claims resolved, which created a conflict, because I wasn't out trying to get business, I was trying to help policy holders. And my agreement was that I would be there until a newspaper agreed to work with me on a story. At the time that I got an agreement I came back to California.

Q And, in fact, you were soliciting newspapers

Vol. R. 10269-172

and television stations to do a story about you, so you could tell about your being mad at State Farm, and start your business as being an expert witness; isn't that true?

A Absolutely not. Not even close to the truth.

Q Isn't it true that you were working, as you've just told us, on getting a newspaper to run an article about you?

A About what happened after the earthquake. Not about me. I'm not newsworthy.

Q Wasn't your picture in the paper in the article?

A I was on the front page with my little grandson, yes.

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Vol. R. 10269-182

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Q And State Farm has a rule where anybody in that whole company can go into any level of management and say, through the open door policy, "Somebody's doing something wrong." Isn't that true?

A That is true, and that's why I went all the way to the deputy regional vice president with my State

Vol. R. 10269-183

Farm documents, not just allegations, but proof, before I quit the company and went to the newspaper. I gave them every opportunity to correct it.

Q To the deputy regional vice president?

A Greg Jones, yes.

Q Who was that?

A Greg Jones.

Q Now, wait a second. Greg Jones wasn't a vice president.

A He was a deputy regional VP. He's now a regional VP in southern California.

Q I thought State Farm taught people to discriminate. Don't they?

A I don't know what you're getting at.

Q Can you describe Mr. Jones?

A Yes, I can.

Q How would you describe him?

A He's an African American, is that where you want me to end?

Q Sure.

A Okay.

Q Now, did he discriminate against you because you were a woman?

A I don't know what his reasons were for not following up on it. It was his, his adjusters that had

Vol. R. 10269-184

done the review that was the result of the forms that I took to him, and he was the one that decided to sweep it under the carpet and not correct it. And was promoted for doing it. Everyone that played a role in sweeping the $175 million savings on that earthquake under the carpet, leaving people's lives endangered, were promoted. So don't tell me crime doesn't pay.

Q Mr. Jones, is it?

A Mr. Jones.

Q Is now a regional vice president.

A That's correct, yes.

Q And by the way, while we're talking about discrimination, who's the assistant vice president of claims?

A In —

Q For the auto department.

A I don't know that I know who you're referring to.

Q Pardon me?

A I don't know who you're referring to.

Q Do you know who the assistant vice president of claims is?

A In this region?

Q No, the assistant vice president of claims. At home office there are levels too, aren't there?

Vol. R. 10269-185

A Right, there are. I was just trying to clarify your question. No, I don't.

Q In fact, it's a woman, isn't it?

A Very probably.

Q Isn't it a black woman?

A It very probably could be. But I'll bet it's a —

Q How about an old black woman?

A It could be a forty-year-old black woman doing what a forty-year-old white male tells her to.

Q As a matter of fact, most of the forty-year-old white males in the company report to her, don't they?

A Possibly. But I bet she reports to somebody and does what she's told to do.

Q Isn't it true that since you left State Farm, being mad at this investigation, you've criticized them for whatever they do?

A I didn't leave because I was mad about the investigation. That investigation meant nothing to me. And the investigation was concluded at the time I left the company, and wasn't reopened until after I went to the newspaper, which was months later.

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Vol. R. 10269-196

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Q (BY MR. CRANDALL) Have you provided in any of your recent depositions the names of people who have

Vol. R. 10269-197

cheated policy holders in accordance with management instructions? Isn't it true you haven't done that?

A Well, no, that isn't true in the way that you phrased that question, because anybody that goes out to handle a claim that's not properly trained is cheating policy holders when they don't tell the policy holder that they don't know what they're doing.

Q I didn't ask you about training. I asked you —

A We're talking about cheating.

Q Can you list people who cheated people in accordance with management instructions to do that?

A Yes.

Q You've never listed them in the depositions, have you?

A Well, I haven't been asked to give them a list, but when you give people less than they're entitled to, you're cheating them.

Q Give us a list.

A Well, I didn't come prepared to give you a full list, but most of the adjusters that worked on the earthquake

were cheating policy holders, and that was the whole reason for going back and doing the closed file review, is we knew —

I could also give you the name and policy

Vol. R. 10269-198

number of the people that were cheated.

* * *

Q Do you have any information, any names of anybody in the auto company who cheated people in the third-party bodily injury cases like the Campbell case?

A Well, I haven't gone back and tried to put together a list like that. But I would be more than happy to do that for you.

Q And you're aware that there's no allegations

Vol. R. 10269-199

in this case that an earthquake caused this accident?

A I'm absolutely aware of that, and I didn't imply that.

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Vol. R. 10269-204

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

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Vol. R. 10269-207

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Q (BY MR. CHRISTENSEN) All right. Now, the next thing I want to ask you about is, Mr. Crandall showed you the State Farm conflict of interest agreement and so forth, referred to an investigation over conflict.

Did State Farm determine you were guilty of a conflict of interest?

A No.

Q Did State Farm do an investigation of your personal life?

A Yes. Extensive.

Q Did they even try to get into your sex life?

A Yes. As if there's anything to get into.

Vol. R. 10269-208

I'm sorry.

Q Did they have someone pay a maid at a hotel you were staying at to try to prove that something was going on between you and Mr. Taylor?

MR. CRANDALL: Objection, no foundation, Your Honor.

THE WITNESS: They interviewed her.

THE COURT: Lay the foundation.

Q (BY MR. CHRISTENSEN) You're aware of that. You've been told.

A Yes, I've seen the report.

MR. CRANDALL: Objection, calls for hearsay.

Q (BY MR. CHRISTENSEN) There's an eighty-eight-page report that was done on you?

A It's more than eighty-eight pages, yes.

Q You've seen it?

A Yes.

Q And is that part of it?

A Yes. I don't know that she was paid, though. I'm not testifying that she was paid. She was the maid at the motel, and they got a statement for her.

Q What did it say?

A It said that she assumed that I was having overnight guests, because my pillows were always messed up in the morning.

Vol. R. 10269-209

Q Is this the best they've been able to come up with in all the efforts they've made to look into your personal life?

A Yes.

* * *

Vol. R. 10269-210

* * *

Q Now, it's been suggested that you left State Farm because you were running from an investigation, you were disgruntled. I think it's fair to tell this jury the circumstances. Why did you leave?

A I left State Farm because we had used untrained adjusters in handling earthquake claims. And with an earthquake loss the damage is referred to as hidden damage, because it isn't real obvious. But there really isn't anything hidden about it if you know what you're looking for.

So we had all of these untrained adjusters come in, they had no training prior to the earthquake, or even

after the earthquake, in how to handle a claim, but yet they were going out and they were giving out information about how these losses should be handled and how the damage should be repaired.

Vol. R. 10269-211

And when we started getting in reports from engineers, and soils engineers, and contractors, we found on numerous occasions that the damage that our adjusters thought didn't exceed their deductible, did, in fact, frequently exceed policy limits. And that in several instances, we found that we had left people in unsafe homes, sometimes for months, where it was recommended that they abandon the property, once they called in their own experts.

Q Once that was discovered, what did you do?

A Well, I insisted that we go back and review these files, and finally got management to allow me to go back and review the closed claims. So we had adjusters that came in, frequently the same adjusters that were involved in the beginning in mishandling these claims, that did an extensive file review to identify the claims that we had mishandled.

And in the area where I was supervising, we determined, in reviewing the paper file — and that's not in getting, you know, experts called in, but just looking at the information in the file — we determined that 56 percent of the 78 that had not reopened on their own had, in fact, been mishandled, and needed to be corrected, to the tune of somewhere close to $175 million.

Vol. R. 10269-212

Q Did you try to get State Farm to remedy that?

A Yes, I did.

Q Would they do it?

A No.

Q Let me show you this document. Just to be comfortable, these aren't my cross examination notes. What is that big document?

A Well, there are actually two documents, here. One of them is a claim number listing, and the other one is copies of log sheets where we had identified what was

wrong with the handling of the claim.

Q This is State Farm's own records?

A Yes.

Q And do they show that about 1,400 homes were grossly underpaid?

A Yes.

Q And that was how much money, again?

A Well, in the overall disaster it was estimated at $175 million. That was their numbers.

Q And did you insist that State Farm make that right?

A Yes.

Q And is that when you went clear to the deputy regional vice president?

A Yes.

Vol. R. 10269-213

Q And would they do it?

A No.

Q So what did you do?

A Quit.

Q Did you take those documents with you?

A Yes.

Q Photocopy them secretly?

A Yes. Their word is I stole them, yes.

Q And they prove what you're saying.

A Yes, absolutely. Right down to the penny, names, claim numbers, dollar values. They prove everything that I've alleged about the mishandling of claims.

Q And when State Farm wouldn't make it right, you quit.

A That's why I quit. Actually they took me off of disaster, called in a person to review this review that had not handled an earthquake claim. But eventually, because so many claims opened as a result of me helping these people, they had to reopen their disaster office four and a half years later, as a result of the 60 Minutes piece.

Q And what did they have to pay?

A Well, I haven't been able to get that amount. They don't share that kind of information with me. But

Vol. R. 10269-214

I know that there were a lot of claims that reopened.

Q When State Farm wouldn't make it right, you went to the media?

A Yes.

Q And did you give them those documents?

A I didn't give them to the media at that time. I did make them available to 60 Minutes. They were a part of the 60 Minutes piece.

Q Once you'd gone to the media, did they decide you needed to be investigated some more?

A After I went to the newspaper, yes, they opened a full-blown investigation. Right down to fabric content of my clothes.

* * *

Vol. R. 10269-215

Q Now, have you gained access to an internal State Farm memo where they admit they low balled those claims?

A Yes.

Vol. R. 10269-216

Q Is this that document, at least the parts that haven't been redacted?

A Yes, I have obtained a full copy of that document since then, but the part that we're talking about is in that redacted one.

Q Was this redacted by a court in California?

A Yes, it was.

Q Was this made available to the media in California?

A Yes, it was. The media is the one that petitioned the court to release it, and that's why it was redacted.

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Vol. R. 10269-218

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Q Now, you were asked about a video tape you made at State Farm. Describe that, please.

A Well, State Farm didn't have a training program for adjusters and how to handle earthquake damage. So after a few months, when every twenty-eight days you get in a new group of adjusters that need to be trained, so after a few months I went out and bought a

camcorder, and got three different contractors to help me. And we made a training film of how you should go about scoping a building for earthquake damage. And what was involved in the repair.

Because these adjusters are the ones that were writing the estimates for how to do the repair, and

Vol. R. 10269-219

you can't write an estimate to do a repair unless you know what the damage is, and what needs to be done to correct the damage. So this showed actual damage, and it showed — By that point we knew how to do a repair, and there was an area in Watsonville where it was at all different stages, from total destruction, to repaired and being lived in again.

Q Let me see if I can shortcut this, in the interest of time. Was your motivation in making the video to try to help the adjusters do a better job of finding the damage done by the earthquake?

A Well, it was twofold. To help them better identify it and address it, or to at least know that it was there, and to know enough about it to know that they needed help. But if they didn't know how to address it, to at least get qualified help to them.

Q Was the effect of that video to raise the average pay per claim on those claims?

A Probably about ten times, yes.

Q So once the people were trained, they found more damage.

A Exactly.

Q So what did State Farm do when they discovered that?

A They had a tizzy, ordered me to turn the

Vol. R. 10269-220

video over, stop using it. They confiscated it, and the person that confiscated it agreed later in a court that he had never seen the video, even though —

* * *

Vol. R. 10269-221

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Q Didn't you do an analysis of the payments on the earthquake claims to see how women fared, as opposed

to men?

A Yes.

Q What did you conclude?

MR. CRANDALL: Objection, irrelevant, Your Honor.

THE COURT: State your response.

MR. CHRISTENSEN: Well, she's testified

Vol. R. 10269-222

earlier that she determined that women are paid less than men, and this is the background for that. I didn't get into it earlier because I didn't feel like I could get into the earthquakes until they opened the door, but now they've opened it.

THE COURT: I'm going to overrule, but I think the door was opened on that issue.

Q (BY MR. CHRISTENSEN) What did you conclude?

A That women receive 74 percent of what men receive.

Q And did you do an analysis of how people that trusted State Farm, as opposed to those who went and got outside advice?

A Yes.

Q And what did you determine there?

A People that relied on State Farm's estimate of their damage got 42 percent of what people received that didn't trust State Farm and hired their own experts. So about two and a half times.

MR. CHRISTENSEN: Thank you.

THE WITNESS: Thank you.

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Vol. R. 10269-288

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(The jury left the courtroom.)

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Vol. R. 10269-238

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MR. CRANDALL: Our position simply is that we'll make a motion to strike all of her testimony about that fire company case, because it was beyond the scope of the court's order which limited her testimony to auto company cases.

And I do have to agree with Mr. Christensen, it was my understanding from our bench conference that he had laid, you said he laid a foundation that the auto company and fire company practices were so similar that, and he could go into auto or fire company practices.

And that was my understanding, and for that reason I didn't make what I perceived to be a useless objection to what I perceived to be prejudicial evidence.

MR. HUMPHERYS: Your Honor, I think the issue is moot anyway, because in cross examination counsel went extensively into the issue of fire claims and earthquake claims. So I think at this juncture the horse has long been out of the gate.

THE COURT: In terms of where we were on redirect examination, I felt — and there were not

Vol. R. 10269-239

objections made there — but it seemed to me that, with the exception of one, I think the response to it was one that I was anticipating, that is the door was opened.

It seemed to me that the door was widely opened by allowing a very aggressive and far-reaching cross examination, something that I think Mr. Crandall handled, obviously, very knowledgeably.

And to me, I think perhaps you've hit it, Mr. Humpherys. Whatever the status of that case was, once the court, once we passed to cross examination, I think the door was opened widely as to the various claims that she handled, and I would think that it would be moot. And I think that the point of going back to the jury and saying, "Disregard this segment of the testimony," I think, given the breadth of the cross examination, would be inappropriate because of the argument of mootness.

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Vol. R. 10270-22

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PAUL L. SHORT called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q And are you currently a State Farm employee?

A Yes, I'm a BI claim superintendent.

Q Are you up in the Ogden area?

A Yes, I work in the Ogden, Utah office.

MR. CHRISTENSEN: Your Honor, may I lead this witness?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) Have you been a claim superintendent for about eight years?

A Yes, I have been for about eight years, I've been in Ogden.

Q And before that you were with the fire

Vol. R. 10270-23

company as a claim representative for five years, approximately?

A Actually, I've been in the auto company for ten years, and prior to that I was with the fire company for five years.

Q I see. So it's a total of fifteen with State Farm?

* * *

Q Now, you were over the Campbell file for a period from, beginning around '88 or '89 up until maybe a year and a half ago?

A Yes, I was the superintendent in the Ogden office. When I took those responsibilities the Campbell file was under my care.

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Vol. R. 10270-24

Q Now, you were — You sat through the trial last October?

A I did. I was the company representative for the first part.

* * *

Vol. R. 10270-25

* * *

Q Now, one of the things that you have done as part of your role in this case over a several-year period, is you've answered certain discovery requests on the part of State Farm; isn't that true?

A Yes, I have signed and answered some of the discovery requests that have been filed.

* * *

Vol. R. 10270-31

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Q (BY MR. CHRISTENSEN) . . . The first request for production of documents that Campbell sent State Farm read, "Produce a complete copy of defendant's claims procedures manuals, including amendments and deletions, that would apply during the period of '81 to the present time. Claims procedures manuals shall include any written, recorded, video taped films, computer data or otherwise reproduced guidelines, procedures, instructions, or other items containing information relating to the handling, adjusting and settling of third party claims, including but not limited to manuals, booklets, looseleafs, memoranda, audio/video tapes, motion pictures and such other items, regardless

Vol. R. 10270-32

of whether or not they are bound together."

Does that sound like an accurate reading of that first set of discovery requests that we sent, at least the part I've read?

A Yes, that's what it said.

Q And those were submitted in 1989.

A Yes.

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Vol. R. 10270-36

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Q We were asking you for the manuals from 1981, when the Campbell accident happened. Wasn't that clear from the request we put up on the screen, as well as other materials?

Vol. R. 10270-37

A Yes.

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Vol. R. 10270-43

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Q All right, I'll move on. Now, on April 5th of 1990, an attorney that works in the Mountain States Regional Office in Greeley, Colorado of State Farm came and participated in a staff meeting in Utah; isn't that true?

A Yes.

Q And you were present at that meeting?

A Yes, I was.

Q And it involved virtually all of the claims managers from Utah; isn't that true?

A Yeah, I believe it would have been at that time all of the auto claims management people.

Q Okay. And this attorney's name was Janet Cammack?

A Yes.

Q And before she came to Colorado to work for State Farm, she worked for State Farm in Texas?

A I believe that's true.

Q All right, let me review this with you. This is a memo that Samantha Bird has provided us. . . .

* * *

Vol. R. 10270-44

* * *

Q . . . Ms. Bird, who will testify next, put out this E-mail the day after the meeting. And I want to review this with you.

It says, "Yesterday in the staff meeting we talked about the need to purge our desks of old memos, notes, and procedural guides."

And by the way, this was written in April of '90, and our request to produce manuals and some of the very things she's talking about were sent in August of '89, a few months before; isn't that true?

A Yes.

Q "With the increase of bad faith suits being filed against State Farm, it is important that you get rid of all of your old stuff I know you have lurking around in your drawers and filing cabinets. Please get rid of any old

memos, claim school notes, old seminar or claim conference notes, and any old procedure guides you may have. They —" And "they" means State Farm, right?

Then it says, "They are trying to avoid having to come up with old records when the request for production of documents comes in, and they request all training manuals, memos, procedural guides, et cetera,

Vol. R. 10270-45

that are in the possession of your claims reps and management.

"Apparently they had a request like this in Texas, and each person had to surrender all their old junk. I guess corporate is not even going to keep old CPG guides, old claim manuals, et cetera."

When it says, "I guess corporate is not even going to keep it," that means Bloomington, the home office; isn't that true?

A That's where our corporate office is.

Q "We will only have what is currently in effect. That way if they subpoena our claim manual for U claims for '87, for example, we can say we don't have it. This should be easier than trying to produce it, or having to defend it.

"So look through all your old stuff and dump it, you won't ever miss it."

Okay, I'm going to follow up on that. Wasn't the Campbell versus State Farm case the only bad faith case pending against State Farm in Utah when this meeting of Utah claims managers was held?

A To the best of my knowledge, I believe it was.

Q And we'd already asked for the stuff that's described in that memo, hadn't we?

Vol. R. 10270-46

A The — I believe, I guess the initial interrogatory requests had been filed and responded to with all the information we'd gathered.

* * *

Q Mr. Short, you were expressly told in this meeting, "Get rid of it so courts and juries don't see it in bad faith cases," weren't you?

A That is not my impression or recall of that meeting at all.

Q Do you think Samantha Bird fabricated this?

A I'm not saying Samantha fabricated. I was at

Vol. R. 10270-47

the meeting, and as I recall the meeting, the discussion was about making sure that we provided consistent responses to discovery requests.

As part of that meeting it was discussed that, in some cases they had found that people had kept obsoleted and outdated portions of manuals, and there was some confusion as to whether or not they were using those things in their current handling, which wouldn't be proper. And so this was an attempt to make sure that our people were working from current information.

Q So your testimony is all this was, was a records management meeting.

A No, it was a staff meeting where we discussed various topics. This was a topic that came up as we discussed the need to make sure that we were consistent in our responses to discovery requests. We wanted to make sure that, you know, when we told someone in some place that we had something or didn't have it, that we were accurate with that.

Q Is it your testimony that it was not discussed that you needed to get rid of evidence that might be used against State Farm in bad faith cases?

A I don't recall a discussion of — And we never would get rid of any evidence that would be pertinent to any case. We would keep anything that

Vol. R. 10270-48

would be required for any legal proceeding.

Q Well, Mr. Short, you had already signed under oath answers to discovery requests in this very case, as of the date of this meeting, hadn't you?

A Yes.

Q Did you speak up and say, "We can't do that, because this material has already been requested in the Campbell case"?

A We had already provided the information. At that time it didn't even occur to me that, you know, that there

would be anything there. And we went out later, even after this meeting in '96, I searched each office. We came up with old stuff that people hadn't replaced.

Q You came up with very, very little, didn't you?

A We came up with quite a bit of stuff. I know a lot of it was duplicative stuff that had already been produced. Stuff, I think a lot of the stuff — You had a mountain of stuff that you guys had gathered from various places. The stuff we were searching for, I think a lot of it you probably already had.

* * *

Vol. R. 10270-52

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Q . . . Wouldn't it make sense, in a big company like State Farm, for, in a historical unit or someplace, that somebody have a copy of each manual for historical reasons?

A It makes sense that we manage our documents and our records. With 70,000 employees, there's numerous volumes of paper that are created every day. I think it would be an impossibility for us to keep one of everything.

I think also I would say that we have learned that, yeah, it's probably a good idea to have some of that stuff, and now we've created, or in trying to compile all this stuff, because we've found that it might be useful or necessary.

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Vol. R. 10270-80

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Q (BY MR. CHRISTENSEN) Mr. Short, as we took a break, we'd just discussed whether it would make sense for a company to have, someplace in the company, a historical record of each version of each section of the manual so that later it could be determined how the manual read at any given date.

Are you aware that Mr. Frank Comella from the home office of State Farm in Bloomington testified in the Schlossberg case on November 15th of 1988 that there was a historical folder kept at State Farm for each

Vol. R. 10270-81

version, each section of the manual, with the date of each change? Did you determine that in your efforts to produce documents?

A I'm not aware of his testimony in any case, no.

Q I think Mr. Fye also mentioned that. Mr. Comella testified in our case, just a few months ago, that those historical files no longer exist. And the question I want to ask you is this. If you had checked those historical files back in 1989, when we asked for those manuals, you may well have found them; isn't that true?

A I can tell you that I checked everywhere, and with all the people that I knew, to check to see if there was any information out there that was requested.

Q You keep saying that, but you've admitted that you just checked on your own desk in your own office. Do we need to go through that again?

A I don't think that reflects my testimony in whole. We checked, I checked everywhere I could.

Q You did not check with the home office to see if they had historical files on manuals in 1989, did you?

A Yes, we checked with home office to see if they had anything that pertained to the requests that

Vol. R. 10270-82

were presented.

* * *

Q . . . Certainly consistent with the April 6th, 1990 memo that Samantha Bird prepared, when it said, "Corporate isn't going to keep a copy, either," isn't that consistent with that memo, that the home office has gotten rid of the old historical files on claims manuals?

A I'm sorry, but I'm not sure — Isn't what consistent?

Q That the home office doesn't have those manuals any more?

A I can tell you the home office doesn't have anything other than what we produced. The memo was not

Vol. R. 10270-83

a corporate directive. It was something on the level, here.

Q See where it says, "I guess corporate is not even going to keep old CPG guides, old claim manuals, et cetera"? Corporate's the home office, isn't it?

A Our corporate home office, yes.

* * *

Vol. R. 10270-100

* * *

Q I'm going to put on the screen the page from your deposition that we just looked at, 75, and I've underlined the part I read you. You would admit, would you not, that having people have goals in claims to reduce their average pay per claim would be improper, wouldn't it?

A I have never seen a goal used to reduce the average per claim.

Q And that would be improper, wouldn't it?

A To just categorically say, "We're going to reduce claims by an average amount," or something, I don't think that would be proper.

* * *

Vol. R. 10270-113

Q I'm going to show you — You testified Utah didn't have contests around appearance allowance and similar things. I'm going to show you a document we obtained from Samantha Bird, staff meeting notes from September 19, 1986. Let me show you the last page. It shows the copies going to different people. Do you see your name on that list?

A I do.

Q Do you see a contest on here?

A I can't hardly read that.

Q For appearance allowance?

A You'll have to read it to me, please.

Q Okay. Under D, estimatics. "One winner will be selected from the Sandy/Murray competition, and one winner from the Ogden/Orem competition. The competition will be related to cost savings in the following three areas: Appearance allowance, after-market parts, and salvage parts." Does that refresh your recollection?

A As I testified before, I don't remember, and I'm not aware of a contest. If that was there, I would say that's

what it says. It's something we don't emphasize, and haven't for, I guess, for what I recall. I'm not saying, maybe it never was a part of what was done.

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Vol. R. 10270-132

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Q Now, are you aware that State Farm claims that it does not keep track of excess judgments?

A That is true.

Q This may be a little hard to read, but on Mr. Campbell's CMR, I'm going to show you the hard copy, can you read — See where the X is, and I'll point it out to the jury in a minute. Can you read that term?

A Yes.

Q What does it say?

A It says "excess loss."

Q Is there a check mark on it?

A There is. I would point out that, in terms of this statistical thing, excess refers to an amount beyond the minimum financial responsibility limits of a state. There's some statistical reporting that's done whenever, like today, the minimum limits in Utah are $25,000 per person. So even though a person may have $50,000 coverage, if there's a payment of $30,000, which is well below the limit, so it's not an excess case in the sense we're talking about, it's excess of the minimum financial responsibility limits, and that's what that tracking is for.

Q So this is a, part of the State Farm database, it's an excess loss, that's because of the

Vol. R. 10270-133

large verdicts in the Campbell case, right?

A That's because there was a payment issued in excess of the minimum limits at that time.

Q Now, if State Farm can keep track of whether verdicts exceed the state insurance minimums, it could certainly keep track of whether the verdicts exceed the policy limits, couldn't it?

A I think we could keep track of many things if there was a need for it. Excess verdicts are rare.

Q State Farm doesn't want to keep track of excess verdicts, does it?

A State Farm has not found a need to keep track of those. They're rare.

Q All right, I'm going to go back to one other interrogatory that you signed on behalf of the company. This is the third set of interrogatories and requests for productions. I'm going to put your signature up so we've got the date. You signed these January 21st of '94, these answers?

A Yes.

Q You signed them on behalf of State Farm?

A I did.

Q All right, let me refer you to interrogatory number 3. The question is asked, "To the extent not listed in the interrogatory above, for each third-party

Vol. R. 10270-134

claim in Utah since 1980 that resulted in an excess verdict, state the title of the case, the court where it was filed, the ultimate outcome, settlement, payment, so forth."

Now, we'll skip the objection, and it says, "However, without waiving this objection, in an attempt to reasonably respond to this interrogatory, defendant —" Is that State Farm?

A Defendant would be State Farm, sure.

Q "— has inquired of all claims management personnel, they cannot recall any other excess verdicts during the 1980s, other than the Curtis Campbell case." That was signed under oath, wasn't it?

A That was signed under oath.

Q And you signed it.

A I did sign it.

Q You had an excess case in your own unit that you didn't disclose under this, didn't you?

A I did have a case in 1983. Excuse me, '93, I believe it was.

Q And you answered these interrogatories in 1994, right?

A That's when I signed those, yes.

Q Why isn't that case up there?

A It's an oversight. We've identified to you

Vol. R. 10270-135

all the excess cases we've come up with. It's an honest mistake.

Q Now, State Farm says they have seven excess verdicts, right?

A Yes, I believe we've identified those to you.

Q But you don't keep records.

A We don't. There's never been a need to keep records. When an excess comes up we look at each one, it's important, it's handled, it doesn't happen that frequently.

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Vol. R. 10271-4 SALT LAKE CITY, UTAH; JUNE 28, 1996; A.M. SESSION

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Vol. R. 10271-80

* * *

SAMANTHA F. BIRD called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q Have you been employed by State Farm in the past?

A Yes, I have.

Q During what years?

A From 1980 until 1991.

Q And were you terminated, or did you voluntarily leave?

A I voluntarily left.

Q While working at State Farm, what positions did you hold?

A I was initially hired as a claim handler,

Vol. R. 10271-81

claim investigator, after three years I was promoted to a supervisor over the same area, and then four years after that I was promoted to a claim superintendent, still in auto accident claims.

* * *

Q Now, during the last, was it five years you were working as a superintendent?

A Yes. The last five years I was a superintendent.

Q Who was your immediate superintendent?

A Bob Noxon.

* * *

Vol. R. 10271-83

* * *

Q All right, now, as the superintendent, when there were claims that were submitted for authority above your $15,000, did you have difficulty with Mr. Noxon giving you the authority needed to pay on those claims?

A Very often.

Q Now, in this, during these times when you would have a problem getting authority to settle these claims, were there times when Mr. Noxon specifically ordered you to change your evaluation to a lesser

Vol. R. 10271-84

amount?

A Yes, there were times.

Q Did he even ask you to change your report?

A Yes.

Q And to rewrite it?

A Yes.

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Vol. R. 10271-85

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Q Would you give an example to the jury of the kind of case that illustrates what you have just said, that the damages would clearly be owing and the authority you were requesting was clear, and really not in a gray area?

* * *

THE WITNESS: You have to understand, I probably went to authority for Mr. Noxon fifteen, twenty times a week, and this was a recurrent, running theme. He wouldn't do it on every file, but it was a recurrent theme over the last five years that I worked with him.

I recall specifically, I was gone on medical leave in the end of '90 and came back in January of 1991, and another superintendent had been submitting my files for me while I was out. And she and the claim rep came back to me as soon as I got back and said, "Here are some files where our policy limits were only $25,000 per injured person, and they are clearly worth more than that, but Mr. Noxon would only give fifteen. He was mad at your claim representative at the time." Which

Vol. R. 10271-86

happened to be Clark Davis.

And the superintendent, the other superintendent, knowing Mr. Noxon and what went on, said, "I'm sorry but I knew you were coming back, and I didn't make the fight for them, so here they are."

And this was relatively how we worked these types of disputes, is I would either go in and say, "This is what

they're worth," and we'd argue back and forth and I would refuse to budge, or if I submit them in written form and left, he would call me in and we might make the rounds, whatever.

But I went in and talked to him, and he still stood firm on his ground. He never gave you a lot of specific reason. For example, he wouldn't say, "Well, in this case I think you've missed, you've misinterpreted what the witness' power would be," or, "You've misinterpreted this fact or evidence."

It was always, "Well, your claim reps don't work very hard. You guys aren't doing — This is too much money for this guy." I could never pin him down to something I could go back and learn from, or change, or say, "Yes, you've got a point I overlooked that."

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Vol. R. 10271-96

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Q Now, we've talked about a meeting in the spring of 1990 regarding the destruction of documents. The jury's already seen the memo that you sent to your unit members. We want to lay just a little bit further foundation on that. But would you relate the substance of that meeting, why it came about, who was present,

Vol. R. 10271-97

just the general background, so we know what was going on at the time.

A I don't remember if it were a typical monthly management meeting. By that, I mean all the State Farm Auto and homeowners' company management in the state of Utah, we typically had those once a month. It could have been one of those, it could have been a special meeting called, because we had some visitors from our regional office who had some messages to impart.

But I don't know which ones they were. But at any rate it looks like the entire management of the state of Utah got together and discussed many things, as you would in a monthly management meeting. And one of the items that we discussed was put on by Janet Cammack, who was a claim attorney three or two, or

something like that, at the time.

Q Now, Ms. Bird, what I have done is I have put page number 2 to Exhibit 137 on the screen. Is this what would be considered a part of your electronic communications at State Farm? This isn't an electronic, but is this a written copy of your electronic communications?

A Yeah, it's a Xerox copy of our E-mail of how we communicated with each other.

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Vol. R. 10271-98

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Q All right. The subject says, "Staff meeting minutes, April 5, 1990." The date of the communication was April 11, 1990?

A Correct.

Q Okay. Now, did you receive your copy of this electronic communication?

A Yes.

Q Did you make a copy of it?

Vol. R. 10271-99

A Yes, I did.

Q And did you keep it with you when you left State Farm?

A Yes, I did.

Q Now, I see here, Mr. Noxon was present, Paul Short was present, and others, Janet Cammack. This says Janet Cammack. I believe that's Janet, isn't it?

A Yes.

Q All right. It shows that you were present here?

A Yes.

Q . . . By the way, were these the formal minutes from the meeting?

A Yes, they were the formalized minutes that would go in the records.

Q All right. Drawing your attention to number 8, just read that for us, if you will, and then I'll ask you to comment.

A "We were instructed to destroy old memos, claim school notes, old procedures, old P and S manuals, et cetera. The reasoning behind this is that we do not keep

discoverable information that could be asked for in

Vol. R. 10271-100

bad faith suits. It was emphasized that we purge information that is older than six months. Seldom do we refer to this old information anyway."

Q Now, where did Ms. Cammack come from, if you know, or what did she represent, if anything, regarding where she came from before working in the Mountain States Region?

A She had just transferred from, I believe it was Austin, Texas. It was a division in Texas to the regional office in Greeley, Colorado. She and the regional vice president, Buck Moskalski, both came from the same Texas region to head the Greeley, Colorado division.

Q Would you tell the jury what was discussed regarding the bad faith suits, and discovery in bad faith suits?

A Well, Janet relayed that when she and Mr. Moskalski were in Texas, that there was a bad faith suit going on, and that the plaintiff attorneys, the attorneys for the other side, had not only subpoenaed State Farm's official documents and records, but went to all of their claim handlers and claim representatives and said, "We want all of your old notes and your manuals and things where you went to claim school. We want your old stuff as well."

Vol. R. 10271-101

And they did not want to have to produce it again if something similar happened in the state of Utah. And so their message was that our claim handlers and representatives were to be instructed to go through and destroy everything so that, should someone come along and ask it to be produced, for whatever reason, that State Farm could honestly say, then, "We don't have it."

Q While working there in 1990, were you aware that the Campbell bad faith action, the present action, had been filed?

A Yes.

* * *

Q . . . As a result of this particular meeting, what did you do in terms of this issue?

A I went back to my desk and made myself a note that this was something I needed to follow up on, not just retain and file away. So it looks like the next day, at about 3:00 o'clock in the afternoon, I sat down

Vol. R. 10271-102

at my computer and hammered out a message to the people underneath me, relaying what I'd heard at the meeting, and that we have a directive that they need to pull their old claim school notes and medical seminar notes, and all of the things that fall into those categories, and pull them out and destroy them.

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Vol. R. 10271-103

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Q All right. Now, you were referring to the fact that within a day or so you went back to your office and prepared a memo; is that what you said? Prepared a memo to your subordinates?

A Correct.

Q All right. Let me — The jury has seen this, so I don't want to spend time reading this. But is this a true and correct copy, which would be page number 4, excuse me, page number 5 of Exhibit 137?

A Yes, it is.

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Vol. R. 10271-104

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Q These pages we were referring to, why did you keep these memos?

A . . . I kept a copy of the minutes that I sent to my staff because, frankly, I was uncomfortable with what they told us to do at the time.

Q You mean destroying documents?

A Yes. We were allowed to ask questions, and somebody asked, "Is there going to be a copy of these

Vol. R. 10271-105

manuals and procedures back at corporate office if we need them for a case or something?"

I could understand where my claim representative may not be the best custodian for the official document that may prove to tout State Farm procedure. It wasn't

me, I forget who it was, it was asked, would corporate offices maintain at least a master set so that we could use them if we need them, and we were told —

* * *

Q (BY MR. HUMPHERYS) Go ahead.

A Someone asked Janet Cammack, and her reply was, no, corporate wouldn't even be keeping these types of things. And I felt very uncomfortable doing that, and to be honest with you, it was a "cover your derriere" memo.

I just thought, "One of these days, if something goes bad and documents have been destroyed and people were upset about it, I didn't want State Farm to

Vol. R. 10271-106

turn around and say, 'Well, we never told her to do that. She must have done that on her own.'" And that's why I kept that particular memo.

Q All right, now, do you recall having a telephone conversation with Felix Jensen about a year or more ago regarding this memo that's on the screen?

A Yes, I do.

Q Would you tell us what he related to you regarding inquiry that had been made by upper management of whether he had his copy of this memo?

* * *

A Mr. Jensen called me and said that he had got a call from someone in corporate offices, back in

Vol. R. 10271-107

Illinois, he didn't remember who, and they were asking about this memo. And they asked Felix if he had a copy of it. And he told the person that, yes, he probably did.

And they also asked for the address of another person who no longer worked for State Farm, but whose name is on that memo as someone who would have received it. They asked, "Do you know where I can find this other person, as well?" And Felix gave his answer to that.

But in his own words, Felix said that he was told by this person that State Farm was going to take, their official position was that this memo didn't exist.

Q And did he tell you how he responded to that person?

A Something along the lines of, "Well, I probably have a copy, so that may be difficult for you to maintain, or difficult for you to prove. I probably have a copy of it."

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Vol. R. 10271-109

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Q (BY MR. HUMPHERYS) Ms. Bird, have you testified before about these documents that we have seen on the screen, regarding the destruction of documents?

A One other time, yes.

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Vol. R. 10271-110

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Q Was it in this state?

A No, it was in the state of Washington.

Q Were you interrogated regarding these documents that we've just put on the screen?

A Yes, I was.

Q And were you cross examined by an attorney from State Farm?

A Yes, I was.

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Vol. R. 10271-110

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Q Were you familiar with what position State Farm was taking regarding your memos?

A Yes, I — They never actually got around to the piece of paper, if it was a valid piece of paper. They were trying to say that I missed the whole point, and that that was never mentioned, and that the only reason that Ms. Cammack came for saying to get rid of things would be for housekeeping reasons, we didn't have enough storage space, and it was just a good thing to do to sometimes clear things out.

They were taking — They never addressed where the memo was a true, existed or not. What they said was, if I was there at that meeting I must have

Vol. R. 10271-111

terribly misconstrued what went on, and that nothing

like this was the subject matter of what she was speaking on.

Q And do you agree with that position?

A Absolutely not.

Q Were these things discussed as you've just described to this jury?

A They were almost the sole reason. They were the major thrust of what her visit to Utah was about.

Q Was the fact that the bad faith claim in Texas was discussed, was that a minor part of this discussion regarding instruction, or a principal part, or how would you describe it?

A It was a principal part. She told us a little story as to what happened in Texas, and it was something they didn't want to have to come again, so in order to prevent that, now they were new to this region, so that was one of the first things they wanted to do, was come in and make sure that didn't happen again.

Q Did Ms. Cammack say anything about coming at the direction of Buck Moskalski, the regional vice president?

A Yes, she did.

Q And what did she say?

A She indicated that — Well, she and

Vol. R. 10271-112

Mr. Moskalski were both in Austin, Texas, at the time of that case, they were both promoted and moved together to Greeley. And she was a claim attorney, who at that time reported directly to him, and she relayed the story that Mr. Moskalski was, in essence, the one sending us the message, and she was his emissary.

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Vol. R. 10271-122

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Q One final note, Ms. Bird. You've indicated how you and your unit always tried to pay fair value on claims and would fight to get the authority you needed to do so. Were you ever reprimanded or challenged because your average paid claims were too high?

A Yes.

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Vol. R. 10271-188

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REDIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10271-205

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Q In your experience, under Mr. Noxon, was it a constant battle for you to try and pay fair value on claims?

A Constantly.

* * *

Q All right. And all of this was explained to the division manager above Mr. Noxon?

A Yes.

Q And you were told that you were not a team player?

A Yes.

Q Was this unpleasantness that you've described, this hassling, this problem, part of the reason why you left State Farm?

A That was a part of it, yes.

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Vol. R. 10272-4 SALT LAKE CITY, UTAH, JULY 2, 1996; A.M. SESSION

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Vol. R. 10272-22

* * **

STEVEN D. PRATER called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q And what is your occupation?

Vol. R. 10272-23

A I am a member of the law faculty at Santa Clara University School of Law, I'm known as an adjunct professor of insurance law. I've been teaching there for the past thirteen years. This coming year will be my fourteenth consecutive year teaching the course at the university law school on insurance law and practice.

I'm also an attorney, admitted to practice law in the state of California, and I also have had, for a number of years, a consulting practice, where I do insurance issue-related consulting for employers, for insurance companies, agents, brokers, insureds, claimants, various parties that have an interest in the insurance field.

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Vol. R. 10272-29

Q Now, before we get to that, let me just go back to your work as a professor. You mentioned that you teach insurance law.

A That's right.

Q In those courses where you're teaching law students about insurance law, do you get into issues that are part of the Campbell case?

A Yes, I do.

Q Do you discuss and teach principles of good faith by, implied covenants of good faith and fair dealing? A I do.

Q And the unfair claims practices acts?

A Yes, sir.

Q And standards in the industry that are applicable to all of the insurance companies?

A Yes, I do.

Q All right. Now, you mentioned that some of your clients, or you consult with some clients who are insurance companies.

Vol. R. 10272-30

A Uh-huh.

Q Could you quickly just give us a list of the kinds of companies that you have been asked to represent, and have represented, either as an expert or as a consultant?

A Sure. Some of my insurance company clients, present and past, would include Allstate, Equitable, CNA, Continental, the Hartford Group, Blue Cross, Blue Shield Insurance Company of North America, John Hancock, Farmers Insurance, Liberty Mutual, Union Central Life, Connecticut General, Mercury Casualty, the auto clubs, three As, Lloyds of London, and in the past, on several occasions, I've been retained as an expert, as a consultant for State Farm.

Q State Farm has actually hired you in cases as a consultant?

A Yes, they have.

Q More than one case?

A Yes.

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Vol. R. 10272-32

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Q Okay. Now, have you also worked as an expert for the state of California?

A I have. They hired me recently as the expert on the insurance regulations on the Unfair Claims Practices Act in a case that they brought an administrative action that was brought against an out-of-state company.

Vol. R. 10272-33

Q All right. Now, have you also lectured and been a speaker at various seminars and training conventions in the insurance area?

A Yes, I have.

Q Can you just briefly relate to us some of your work in that area?

A Sure. In the last ten or so years I've been a featured speaker, a keynote speaker at more than 200

insurance seminars and conventions around the country, and indeed, in other parts of the world. Including here in Utah.

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Vol. R. 10272-34

Q What have you reviewed in preparation for rendering opinions in this case?

A Well, I've reviewed many documents that were specific to the Campbell case, as well as those documents in the back of the room that relate to the Campbell case, and other cases that I've been asked to look at in the past.

Specifically in connection with the Campbell case, I've reviewed thousands of documents, I've reviewed the Utah Insurance Department rules and regulations that relate to unfair claims practices, I've reviewed more than 50 volumes of deposition transcripts of various people involved in the handling of the Campbell case.

Q Now, those are specific to the Campbell case.

A That's right.

Vol. R. 10272-35

Q Have you read depositions of other cases involving State Farm, as well?

A Hundreds of other people from different parts of the country, coast to coast, talking about various cases pending or resolved in other jurisdictions.

Q All right, what else have you reviewed?

A I've reviewed the trial transcript of the bad faith trial that took place in October last year before a different jury, where State Farm was found to have been guilty of bad faith, and I read the transcript and the testimony that came into that trial.

I've also been reading the trial transcript daily that's been sent to me every day in this trial, so I've had an opportunity to hear and to read what the witnesses have said in this particular case.

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R. 10272-36

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A I've reviewed hundreds of PP&Rs, I've reviewed the transcripts of various court hearings, I've reviewed

various internal State Farm manuals, memoranda, president's messages, video tapes, training and teaching materials from the State Farm claim schools, and training and teaching materials that are used in the ongoing training. The claim school is the starting point. The training is continuous if you're employed at State Farm.

I've reviewed, and recently produced to State Farm in those boxes back there, in the back of the room, 73,278 documents that were recently copied, and I provided copies of those to State Farm at their request, including hundreds of depositions, State Farm company-wide manuals, various PP&R manuals, claim superintendent manuals, auto claims manuals, auto investigation resource manual, the Excess Liability Handbook, various internal publications that are used for the ongoing training of the State Farm personnel, including, I think it's referred to the "Obiter Dictums," which is a Latin phrase for "the last word." That publication.

The Mediclaim publication, which is an internal publication of the claims department to help

Vol. R. 10272-37

get people educational information on handling medical claims. I've reviewed special investigation unit guidelines, general claims memorandums, executive claims memorandums from the home office. I've reviewed basic claims course materials and other training materials. I've reviewed internally-generated State Farm reports of various sorts, as well as statistical information, including some of the statistical information that's being used by State Farm as exhibits in this particular case.

It's important to point out that this is not the universe of documents that I've reviewed in connection with State Farm. There are more than that, those in the back of the room that I have also reviewed that I no longer have, or couldn't bring with me because they're subject to various orders in other cases, so I can't talk about those.

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Vol. R. 10272-38

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Q (BY MR. HUMPHERYS) All right. Now, can you give us just a general idea of the amount of time that you have spent in this case preparing for testimony?

A In this particular case, since 1993, I've spent in excess of 300 hours reviewing the documents in connection with the Campbell case.

Q Now, is that in addition to all of the other hours that you've spent in other cases reviewing documents?

A That's right. I've spent hundreds and hundreds of hours in connection with State Farm materials in the past several years.

Q Has this material given you sufficient

Vol. R. 10272-39

information for you to form opinions regarding the various practices, patterns, and activities, policies and procedures of State Farm, not only locally, but nationwide?

A I believe that it has, yes.

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Vol. R. 10272-43

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Q (BY MR. HUMPHERYS) All right, now, could you now tell us generally what is understood in the insurance industry that relates to this implied covenant of good faith and fair dealing, and how insurance companies are required to adhere to this standard?

A Sure. Basically the standard requires us in the business, and we know it, to treat our insureds honestly and fairly. We know that if there's a lawsuit filed against an insured, that we've taken money from, premium payments monthly in exchange for our promise to be there for them, that we have to accept settlement offers where there's a substantial likelihood of an excess verdict being rendered against them.

We know that we have to conduct full, fair, thorough investigations and evaluations with a proper

Vol. R. 10272-44

focus. In other words, claims handlers aren't supposed to be looking for reasons not to pay, or for loopholes, or

ways to escape. They're supposed to be looking for ways to honor the promise, exculpate insureds from bad situations.

Q "Exculpate," Professor?

A Remove them, get them out of the trouble. That's why the liability insurance is there. We know also, in third-party cases, that you have to keep the insured informed, constantly advised as to what's going on, so that they know.

Because you're supposed to treat lay people as lay people, not as experts in insurance. You have to explain concepts and stuff to lay people, as people that aren't trained in the nuances and subtleties of insurance law. It's a basic requirement of honesty and fairness and reasonableness, is the word that's used frequently as a synonym for bad faith. Unreasonable conduct by an insurance company is known to be bad faith.

Q In a third-party context, are there additional duties as part of this covenant of good faith and fair dealing, that pertains to disclosures to the insured who is now being sued?

A Yes, as just suggested, you have to tell

Vol. R. 10272-45

them. You have to be honest with them. You have to be up front with them about their risks associated with a potential excess verdict. So that they can, if need be, select independent counsel to give them advice and protect their interests in the event of an excess of the coverage available kind of a problem.

Q What about misrepresenting facts, or misstating, or misleading facts in that context?

A Absolutely improper.

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Vol. R. 10272-57

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Q All right. Now, do those unfair claims practices acts, regulations, standards and so forth, are they amended from time to time?

A Yes, they are.

Q And has that, in fact, been the case in Utah?

A Yes, it is.

Q Okay, I want to draw your attention to one of those amendments, that's contained in Rule 590-89-6. Excuse me, dash 8, subpoint C. Is this a later amendment to the prior standards that we were looking at?

A Yes, it is.

Q Okay. I'd like to draw your attention, now, it essentially has the same preface regarding unfair methods, deceptive acts and practices defined. I would like you to focus on C and read that.

A "Compensation by an insurer of its employees, agents, or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims."

Q How is that applied in the insurance industry as meaning that this is an unfair claims, or deceptive practice?

A Well, compensation should not be a

Vol. R. 10272-58

consideration for a claim handler. Their job is to pay claims, and not worry about profits, or to be looking to make money because of saving money for the company.

Q So it should not be based on savings to the insurer?

A That's right. The compensation shouldn't in any way be related to that.

Q And again, is this the standard in the industry?

A Absolutely.

Q And if someone were to violate this, are they violating industry standards?

A Correct.

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Vol. R. 10272-138

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Q We've already gone through the PP&R program in great detail, so I don't want you to rehash through that again.

A Okay.

Q But if you can just synopsize that very quickly, as a basis to go into your own opinions.

A Sure. The PP&R process, I know it's been talked

about a lot, and I have several here I could talk about. But the PP&R process has some goals that are, that I'm very critical of, and that is setting those cost reduction payout goals in advance, before you know what the claims are going to be in the future.

It's an artificial way of trying to control costs, and put pressure on people to pay less than fair value. It's not appropriate, and I think State Farm is now conceding it's not appropriate, because they've changed their PP&R manual and said it's not appropriate to do it.

The problem is, is that they're still doing it. And —

Q Let me stop you there. We have seen some

Vol. R. 10272-139

PP&Rs after 1994, when that memo came out, that was shown to the jury. Have you seen examples in your specific cases of either individuals, in the form of testimony or documents, that would indicate that, though the written memo says they shouldn't do, they continue to do it?

A Yes, I have.

Q And would you please relate to the jury what you have seen and witnessed.

A Well, for example, I'll give you the most recent one. In that case in Washington that I was recently asked to consult on, they sent me the deposition of the — and I've got some of the material on it somewhere, I think — of the head guy in Washington in charge of their med pay and their PIP claims. He was for a while the head honcho in the state.

And he acknowledged that in, I think it was '93, he got instructions to no longer put cost outcome goals in PP&Rs. And so when he was asked in his deposition about that, he says, "Well, did you stop doing it?"

And he says, "Yeah, but we just do it verbally. We knew that we couldn't put it in writing, we just does it verbally."

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Vol. R. 10272-141

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Q Okay. Now, when people such as yourself or Mr. Fye renders opinions, such as it's improper to interject profit in claims department and put these in the PP&R program, what have you found how State Farm responds in their manuals to these criticisms?

A Well, if there's something that's offensive, they think will get them in trouble, my experience has been that they'll obsolete it, they'll call it something else, or come up with a new manual and change the name and change, you know, get the troublesome words out of it. Does that answer your question?

Q Yes. Has it been your experience, however, that the practices change, along with the change of names or the change of manual?

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Vol. R. 10272-142

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THE WITNESS: No.

Q (BY MR. HUMPHERYS) Let me rephrase it. Has it been your experience that the improper practices that you have been critical of change, even though the manual may have different wording, or a different name on it?

A Yes.

Q Yes, what?

A It does. The practices continue. . . .

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Vol. R. 10272-144

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Q (BY MR. HUMPHERYS) Let me move on to another area, now. We have heard testimony from Ms. Bird, for example, that she thought she had been trained to treat claimants fairly and to be honest, and then she also gave us examples that would call into question that. Did you read her testimony?

A I did, depo and trial testimony.

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Vol. R. 10272-145

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Q (BY MR. HUMPHERYS) Let me ask it this way, then. Did you see examples where Ms. Bird in her

testimony indicated that she had not, either treated people fairly, or been honest in her claims practices? Admittedly, that is her own testimony?

* * *

A Well, she said she was trained to omit things from files, which would, of course, make them deceptive or misleading by omission.

Q Not telling the full story?

A Yes, telling only the half story, or the story that looks good. She was trained not to put things in writing that looked bad, "Don't put it in

Vol. R. 10272-146

writing."

She also testified that while the Campbell case was pending, that she had attended that April of 1990 meeting with the other Utah superintendents, where she was told to go back to her office and destroy old manuals and memos and other documents that might be evidence of how they actually really handle claims. So they wouldn't have to be provided in connection with litigation.

There's no evidence that anybody objected to that. She followed the orders, I guess, but she kept the memo because she didn't think it was right, but she did it anyway.

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Vol. R. 10272-175

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Q To your knowledge, has State Farm denied that they have any list or compilation of bad faith cases against it, or punitive damage cases against it?

A State Farm has consistently maintained, in several cases, including this one, including Smith and others, that they don't maintain any lists, or any computer data, or any information in any form, at the present time or in the past, on claims made against State Farm, or payment made by State Farm for bad faith, for unfair trade practices, excess verdicts, or punitive damage awards.

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Vol. R. 10272-181

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Q (BY MR. HUMPHERYS) Any other examples, other cases that can illustrate that?

A An example, like in the Smith case this happens to interrogatories, which are answers under oath, you have to answer those under oath. State Farm asserted that it couldn't produce old manuals, it couldn't produce old memos, it couldn't produce old operations guides, it could only produce current ones. And this is a consistent theme that you see that they don't have anything that's old, they just have new stuff.

And yet when Macherle was presented with a copy of the Excess Liability Manual, and asked to look at it and authenticate it, and he looked at it, and he says, "Oh, yeah," he knew he had seen that, but then he was able to produce two memos that obsoleted it. This is a company that says, "We can't produce things," but when it helps them, they can.

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Vol. R. 10272-184

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Q Has it been your experience, Mr. Prater, that

Vol. R. 10272-185

State Farm does destroy documents which depict its claims practices that are deceptive and unfair?

A And any claims practices, yes. They try and destroy old stuff so that they can control what gets out in litigation and what people see.

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Vol. R. 10272-219

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DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Prater, are you aware that State Farm, in disclosing its defense in this case, as part of the discovery process, has designated several insurance regulators that State Farm plans to call as witnesses?

A Yes, I am.

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Vol. R. 10272-221

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Q Okay. Now, these witnesses have testified, and I'm not going to try to cover everything that they may have said in their depositions, but speaking generally, these witnesses have testified in their depositions that they've not observed a pattern and practice at State Farm of unfair claims handling.

A That's right.

Q Have we asked you to assist us in responding to that testimony?

A You have.

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Vol. R. 10272-228

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Q (BY MR. CHRISTENSEN) Now, you've testified at some length about State Farm's practice of keeping certain things out of files, and putting certain self-serving things in files. Do you have an opinion as to whether that practice is, in part, motivated by State Farm's desire to keep insurance commissions from learning certain things?

A Well that's the nature of secrecy, you keep it secret. They're not disclosing it to the public, they're resisting it in trials, and they're not going to give it to the insurance commissioner, either. I mean

Vol. R. 10272-229

that just a lot of things that are bad go on in secret, and you try and cover that up, and so I have no reason to believe that they're turning over the information to the insurance regulators. The regulators are supposed to be like the police department, in a sense, in the industry, but again, not very effective in the claims handling area, in my opinion.

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Vol. R. 10272-253

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THE COURT: Let the record show the jury's left the courtroom.

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Vol. R. 10272-258

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MR. BELNAP: Your Honor, we had a discussion a week or two ago about talking about verdicts or judgments, I can't remember which word we used, but trial results coming into evidence in other cases. Your Honor indicated that those had been discussed in a deposition, that there was going to be some latitude

Vol. R. 10272-259

given in that regard.

In this particular area, Your Honor, where you're dealing with a punitive damage claim that has to sit on the merits of this case, with this jury, with the facts in this case, for them to determine the amount that they think is appropriate, we don't think it's appropriate to mention any verdicts or judgments. But we've argued that before.

It seems entirely inappropriate to talk about settlements. And if that door is opened, I don't know how a person on the other side of that door can respond to it, other than say, for instance, taking Mr. Prater's ninety cases that he's cited in his materials, and going through and talking to the jury and him about each one of those cases, and what they were resolved for, which, for the most part was, you know, relatively insignificant numbers.

Or one of the witnesses that the plaintiffs designated in this case, Mr. Thur, who Mr. Prater has talked about being involved in the Singh case, who's had, I think ten or eleven cases against State Farm in his career. And the majority of those have resulted in, results of those cases that have been tried that are low numbers. There's been, I think he had two cases that have been at the range of a million dollars, but he's

Vol. R. 10272-260

had a number of cases where there have been verdicts

down below $100,000, and no finding of punitive damages.

And it just, in terms of the defendant's position, to bring in evidence of what parties paid in a settlement of a particular case, and Mr. Humpherys' argument at the bench was, well, Your Honor, "Mr. Belnap asked Mr. Fye about a settlement." They brought it up, Your Honor. And they misrepresented the record on that case, or at least left it in what we perceive a misrepresented state, to imply to the jury that that's what that case resulted in as a bottom line. And Mr. Fye knew that it didn't. And that's why we were left with no position other than to go into it and talk about the fact that the case was settled.

And to say that opens the door to the Singh settlement amount, and makes that probative, we just don't agree with, Your Honor. And don't see how that can have any relevancy to this jury. And certainly, if you weigh the 403 aspects on top of that, it makes it even more of a problem, in our view, Your Honor.

MR. HUMPHERYS: May I short circuit this? In reflecting through the kinds of things that this issue will open up, I think the plaintiffs are willing to stipulate, we were concerned about them getting into what ultimately happened in the $100 million verdict.

Vol. R. 10272-261

If we can have a clear understanding and stipulation we're not going to be going into the results of the other cases, on both sides, we'll just leave it alone, and we'll just stipulate to it. But it needs to go both ways.

MR. CRANDALL: As an out-of-towner, I'm shocked. I hear that they presented evidence in this court that there was a $100 million jury verdict against State Farm. Knowing that it was settled for a million dollars, they now want this court to allow the jury to decide this case with that kind of distortion?

MR. HUMPHERYS: That was cleared up, counsel. You weren't here. That was cleared up by counsel when he said it was settled for cents on the dollar. And the purpose of that had nothing to do with trying to determine the result. It had to do, and the thrust of it was whether or not State Farm was changing its

practices based on substantial awards against it.

But apart from that, there was the evidence presented, they got in the fact that it was settled for cents on the dollar. Now if they want to say, "Okay, let's don't get into the Singh settlement amount," that's fine. But let's have it apply both ways and from this point forward. That's all I'm saying. I mean, are you changing your position now?

Vol. R. 10272-262

MR. CRANDALL: I don't think cents on the dollar shows the distortion that was allowed to go to this jury. Cents on the dollar could be 90 cents on the dollar, would be $90 million.

THE COURT: You weren't here, either, Mr. Crandall.

MR. CHRISTENSEN: The representation of a million that I first heard is the first time we've ever heard a figure. The evidence has been it was subject to a confidentiality agreement, we certainly didn't know the figure. And Singh was apparently subject to a confidentiality agreement. The fact they paid $30 million, I guess State Farm recently disclosed in some pleadings they filed.

But if they're going to be allowed to present a number on the Texas verdict in Poston, then we want to present the $30 million in Singh. If they're going to stay out of it, we will.

THE COURT: Mr. Belnap, are you planning on putting evidence in on that?

MR. BELNAP: No, we're not going to put evidence in on the Poston case.

MR. HUMPHERYS: What about the other cases? Isn't that what you were asking, or were you just asking about the Poston?

Vol. R. 10272-263

THE COURT: I was asking about that. But my understanding, from Mr. Belnap's argument, from which, frankly, I find persuasive as well, is that we are going to confuse the jury, and we're going to distort the jury's — I'm not sure "distort" is the right word — but we could lead them into an area of deliberation which may not be where they ought properly to be, which is on what

punitive damages, if any, ought to be awarded in this case, based upon the evidence before it in this case. And my understanding of your argument, Mr. Belnap, is numbers from other cases shouldn't be in, whether high or low.

MR. BELNAP: Right.

THE COURT: Isn't that where you're coming from?

MR. BELNAP: Yes, that's our position.

MR. HUMPHERYS: And we're stipulating, and let's proceed.

THE COURT: Now, I will say that the reason that the number didn't come in, in the Poston settlement, was Fye was under a protective order not to disclose it. And I think Mr. Belnap felt the same way, at least that was what I read out of it.

If State Farm should feel like they need to put that number in, I don't have a problem with it

Vol. R. 10272-264

coming in, just to clarify what the record is. But I'm not going to compel that, given the positions that the parties took, that they feel under some obligation not to disclose it.

But that's — I'm comfortable with what I hear is a stipulation from both parties that we not go at all into any amounts, either in settlements, or verdicts in punitive damage cases where we're at.

MR. CHRISTENSEN: Well, we're only willing to so agree if the record remains where it is. If they're going to say that even though a jury awarded $100 million, they only paid a million, then to counterbalance that, we want to show in another bad faith case they did pay $30 million, and the practices continue.

MR. BELNAP: Well, the evidence is what it is on Poston. We didn't want it to come in, we had a hearing, but it's there, whatever came in. But we're not taking it further, Your Honor.

THE COURT: All right, that's — Then I think that matter's closed.

MR. HANNI: May I have just a minute, Your Honor, before we pass that?

MR. BELNAP: Your Honor, a couple of quick points,

and that is that I think it's appropriate that

Vol. R. 10272-265

there be some instruction given the jury that results, any evidence of results in other cases is not evidence of what their determination on damages should be under these facts. And we would like to get an instruction on that at the appropriate time.

The other problem, I don't know that we need to go into this, other than just to mention it, given the stipulation, but any time you start bringing in evidence of settlements, it's against public policy, and it goes to the fact that there is a policy to settle cases. And if you throw those around it chills that policy.

THE COURT: Well, it seems to me that that's one more reason that the argument that you make today not to get into the Singh settlement amount is an appropriate argument. As far as the instruction goes, I think that may be meritorious.

And as Mr. Humpherys has indicated to the court, the reason that came in wasn't to suggest a number, it was to give evidence that goes to other issues of State Farm's responsiveness. And that issue, now we've heard a lot of testimony on it, and the parties have agreed to leave it where it is, may well warrant an instruction as to damages. We're going to have to cover jury

Vol. R. 10272-266

instructions soon, and what I would do is invite you to prepare an instruction to that effect and submit that to counsel and the court, and we'll take it into consideration.

All right, let's take up the issue of the appropriateness of abusive litigation tactics as evidence in a punitive damage case.

MR. BELNAP: Was that just a matter to indicate on the record what we discussed at bench?

THE COURT: Well, I think it is, but it's an important point. Mr. Crandall expressed some strong feelings, as well as strong views about that, and I think he ought to be given a fair chance to make a record, and I want to hear from Mr. Humpherys. And I think I ought to make at least some record as to why I ruled as I have.

MR. CRANDALL: Thank you, Your Honor. The witness was being questioned about trial tactics in the Singh case, and led to be saying there were dirty tactics employed by State Farm because they hid documents, they lied to the court about not having documents, and they didn't comply with the discovery rules.

And the things they did in responding to discovery, the answers they provided in their formal

Vol. R. 10272-267

responses to discovery, and the answers in court by attorneys and witnesses and Mr. Kodani, who was a witness and an attorney, were false.

And since that's a California case, I just wanted the court to be aware that in California, we have civil code section 47-2, subsection B, it's referred to as the litigation privilege, and there are many cases that have held that any communicative conduct during the litigation process is, in fact, privileged.

With regard to the Singh case, it's now known that State Farm, after settling, turned around and sued the plaintiffs to get the settlement money back, on the ground that the case was an absolute fraud to begin with, and it was subsequently discovered.

The federal court threw out the case and said, "Under the litigation privilege, it doesn't matter that the Singhs cheated, lied, and stole your $30 million, it's privileged." And under the theory that what's good for the goose is good for the gander that I believe I heard earlier today —

THE COURT: We've bandied that around a number of times.

MR. CRANDALL: And I think it's a very good legal maxim. Plaintiffs can't come in here and now say, "State Farm did this and that in the Singh case," when,

Vol. R. 10272-268

in fact, everything in that case has been ruled to be subject to the litigation privilege.

So what lawyers do in litigation, according, at least, to the California cases, should be exposed in that case. And to avoid second, retaliatory lawsuits, we have a public policy there that bring it out in the trial, or it's

forever privileged, and it cannot be the subject of a second lawsuit.

Well, it seems now that the plaintiffs in this case are requesting punitive damages based on actions taken by State Farm and its lawyers in California, when that action is, as a matter of law, absolutely privileged.

And the cases which I could provide to the court, Silberg versus Anderson is probably the leading case, says that it cannot form the basis of a lawsuit or a cause of action.

But it seems here that testimony's being allowed to go to the jury, which would support, in fact, a punitive damage award. So I think it's clearly prejudicial, and it's inappropriate, and that's why I wanted the record to reflect that I think it was improper and prejudicial error to allow the witness to testify to that.

And also, it's opinion testimony by a witness

Vol. R. 10272-269

who read transcripts of what was happening, so it's based on, I think, improper hearsay. So I think you can base an opinion on privileged information, and privileged actions. And thanks for allowing me to present that argument on the record.

THE COURT: Thank you, Mr. Crandall. Mr. Humpherys?

MR. HUMPHERYS: Your Honor, this issue is addressed in pretrial motions extensively. The court ruled that the plaintiffs could not demonstrate the improper litigation tactics used to take unfair advantage of claimants, and used in concealing its wrongful conduct as it pertained to the present case, because it made the court, or potentially made the court and counsel witnesses, and it opened up a Pandora's box.

The court, therefore, precluded us from going into the issues that have occurred in the present case, even though, as I heard Mr. Prater testify, I could think of a number of occasions in the present case which would be examples of the very things he was testifying to.

But in any event, the court did rule and allow us to use examples and opinions based upon other cases where these tactics have been used, which I think we

were very careful to stay away from the present case,
Vol. R. 10272-270
at least as far as discovery disputes are concerned. We certainly went into some of the depositions, such as Ms. Moredock.

THE COURT: Murdock?

MR. BELNAP: Moredock.

MR. HUMPHERYS: Tracy Moredock, I'm not sure if it's male or female.

MR. BELNAP: I'm sure it is a male, since I sat in his deposition.

MR. HUMPHERYS: We'll correct the record that way, it's a he. And Mr. Mendoza. But that was an area not subject to a dispute, and we weren't getting into discovery disputes and orders of the court. But only the actual testimony of the witnesses.

In any event, as Mr. Crandall talked about a litigation privilege, I think it should be pointed out that we would have to defer somewhat to his representation regarding the case, because we understand Mr. Crandall is the one who has now sued the Singhs and Singhs' attorneys. And based on fraud, and the court threw it out. And I don't know all of the reasons why, but I'll take his word for it. But I understand from Mr. Prater that Mr. Crandall was taking just the opposite position now, as he's appealing to the ninth circuit. But I
Vol. R. 10272-271
understand that we have to take positions in our respective cases that apply, and that's fine. I understand that.

But we are not asking for damages due to what happened in the Singh case or any other case. We are asking, and certainly compensatory damages have nothing to do with it. We are asking for punitive damages based upon the experts' opinions of these tactics that are used to oppress and to conceal evidence, and to take unfair advantage of claimants.

And I think, during the bench conference, the court set forth in explanation of Mr. Crandall that the very things Mr. Prater was testifying to the court had seen done, and had happened and occurred in the present

case, even though we were not allowed to go into it.

So therefore we see a distinction from what Mr. Crandall is raising. We are not asking the jury to award us damages for what occurred in the Singh case, but we are asking for punitive damages to arrest and stop these tactics and these oppressive kinds of techniques which have been used by State Farm generally, and the Singh case was used simply as an example of where and how it had been done.

So I see a significant distinction on what he is saying versus the reason we were presenting the
Vol. R. 10272-272
evidence in plaintiff's case.

THE COURT: Well, I appreciate the comments on the record, counsel. And I think it, just for a preliminary remark, I should say that there are two aspects about this case which I think are quite pertinent to the particular issue.

One is it's a punitive damage case, among other things, there has already been a case that has been tried to establish why, by the very nature of what the issues in this case, I believe it makes it somewhat unique to just garden variety litigation.

And secondly, on the argument of the defendant in this case, the court was persuaded that it would be inappropriate to allow an amendment to the complaint based on the record that was established of stubborn litigiousness, that was based on the record that was made in this case, or otherwise allow testimony into this case before this jury as to the tactics that have been engaged in by State Farm, which arguably have been abusive or inappropriate. Those matters have been eliminated from the case to be presented before the jury. The court's view was that the issue of abusive litigation tactics, as a number of other issues which are being presented to the jury, are appropriate
Vol. R. 10272-273
for this punitive damage trial, but require something of a threshold to be established. I'm quite aware of, and appreciative of the rights of parties to engage in civil litigation, both as plaintiffs and defendants, and the

right to exercise their, protect their interests in engaging in that part of our judicial system which is protected Constitutionally, as far as I'm concerned.

And I believe that some threshold must be established to allow evidence of an abuse of that process in a punitive damage case. And we've had substantial hearings on what is required to go into pattern and practice evidence under Rule 403 and 404 and 406, and all of the record that has been made on the subject.

And I would say that, in the court's view, there would be a higher standard in place before one could get into litigation tactics than perhaps other evidence, because of that Constitutional right, and the fact that it's not going to be an ordinary thing to be able to bring evidence in one case as to how a party's comported itself in another without some foundation being laid.

But it's the court's view that there has been substantial foundation laid as to State Farm's abusive use of the litigation processes, and the evidence that

came in today on the Singh trial seems, to the court, to be consistent with other evidence we've heard from Mr. Fye, from evidence that we've seen from the court's records, from evidence in the record, that Kornblum tape, and the evidence on keeping the plaintiffs tied up for months in law and motion, the use of document destruction.

There has been such a record made on the issues of document destruction, which I think were certainly framed by the Bird testimony last Friday and by other evidence that the court has before it, and from the court's own observation in the present case, the Ortiz testimony, the Mendoza testimony, the court just finds a great deal of, whether it's framed as evidence or whether it's just the proceedings before it, to believe that the plaintiffs have more than met that threshold requirement to be able to present to a jury the evidence of State Farm's abusiveness in engaging in litigation process as a tactic to do the very things that they've been accused of, and it would be, to the court's view, probative of punitive damages.

And after having been fully apprised of this substantial record, and having heard it for many, many months, now, it seems to me that that's a subject that can be fairly raised, subject to the other rules of

evidence that must control. And the court, in hearing the objections that have been raised, has attempted, as best it could, to rule fairly on those objections, and be certain that the record, as it comes in, comports with the other rules of evidence once that subject becomes an appropriate subject for presentation to the jury.

So that's, I wanted to be sure I'm on record as to what the court's basis is for allowing this to come in, and I believe the record made is satisfactory to the court now.

* * *

Vol. R. 10273-4 SALT LAKE CITY, UTAH; JULY 3, 1996; A.M. SESSION

* * *

STEVEN L. PRATER the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10273-26

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Q (BY MR. CHRISTENSEN) You've testified there was a substantial number of trial and appellate decisions which the research in the Smith case uncovered finding State Farm guilty of bad faith and misconduct.

A Correct.

Vol. R. 10273-27

MR. CRANDALL: Objection, misstates the evidence.

Q (BY MR. CHRISTENSEN) Well, state what those cases were, please, the ones that were uncovered with the research from '87 to '95.

A There were trial judgments and appellate court decisions where there were findings of misconduct in connection with State Farm activities and claims. And as with the areas, and there were some, as I said earlier, the majority I think, as I recall, they were — Well, they're all, for the most part they're mostly claims handling related.

Q Okay. Is that available to the public?

A Yes.

Q Any reason why these insurance people wouldn't have access to that information if they chose to look for it?

A No.

Q Now, the information that you found in the Westlaw data bank, would that be all of the cases of misconduct where State Farm was either found guilty of misconduct or accused of misconduct?

A No, that would be just the tip of the iceberg.

Q Why do you say that?

Vol. R. 10273-28

A Because most cases settle, over 90 percent of cases settle anyway. They never get to see the light of day, the jury never gets to see all the evidence. . . .

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Vol. R. 10273-36

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Q Based on your review of their testimonies, your knowledge of the things that they know and don't know, do you have an opinion as to whether these insurance regulators who are listed here on the board had sufficient information to determine whether State Farm was guilty of a pattern and practice of unfair claims handling?

* * *

THE WITNESS: In my opinion, they do not have a sufficient basis to come to the conclusions that they have come to in their depositions, that State Farm has not engaged in a pattern and practice, because there's so much that they don't know about. And they've admitted that in their depo. And plus there's other things they admitted they don't know about, which would be important in my mind to know about, at least generally, before you come to a conclusion.

Q (BY MR. CHRISTENSEN) Okay, they have not reviewed the information in the boxes you have here?

A Not to my knowledge, no. In fact, they were

Vol. R. 10273-37

asked that, if they'd seen State Farm manuals, and no, no, they haven't seen them. They don't know about the validity of the complaints. A lot of them just keep track of complaints, without knowing if they're valid or not.

They don't know about the confidential settlements that are entered into. They don't know about the number of insureds or claimants who have been treated unfairly, who don't file written complaints. They don't know about the day-to-day management of State Farm, how the companies are trained, what manuals and procedures and guidelines were utilized, unless by chance they discover some of that in a market conduct.

But I've seen no evidence that they've done that. And plus you have to keep in mind that State Farm, in

my opinion, as I stated yesterday, they're experts at keeping things secret. So they're not going to know about anything that's kept secret. Just like most of the public doesn't know.

* * *

Vol. R. 10273-41

CROSS EXAMINATION BY MR. CRANDALL:

Q Good morning, Mr. Prater.

A Good morning.

Q If I understand you, there's fifty states who don't have the resources or the power or the inclination to regulate unlawful patterns and practices by insurance companies.

A That's a little bit of a misstatement. I think I testified in my deposition I felt that there were four states that probably had the resources, if they were so inclined, to do a full market conduct exam. But I don't think that, in any state that I'm aware of, there's an insurance commissioner — and that's what I said yesterday — that has the inclination, the time, the money, the resources to get involved in the day-to-day management of a company. Any company, including State Farm.

Q What state are you from?

A I'm from California. Same state as you're from. And California is one of the four states I identified in my depo. We don't do it, we haven't done it, but possibly we would have the resources.

Vol. R. 10273-42

Q Isn't it true that in California, they had an elected insurance commissioner, John Garamendi, who campaigned by saying, "I will be the insurance companies' worst nightmare"?

A It wouldn't surprise me. He's the first elected commissioner. Very consumer oriented. No longer there. He did some good things.

Q If I took accurate notes, I thought I heard you just say that no, you found no evidence of a large insurance company being fined.

A That's not what I said exactly. I said there were some isolated fines. There was an Allstate fine for $3

million that I saw in one state. There was only a $118,630 fines versus State Farm in ten years. Against Allstate there was one for about $3 million.

Q You never mentioned that.

A I did. I said there was some sporadic large fines. But one fine against Allstate for $3 million in ten years.

Q Let's take a look at the Phoenix Journal.

A Okay.

Q It's Oakland, California, October 1, 1992.

MR. HUMPHERYS: Your Honor, I would like to object. Every time we've tried to use newspaper articles they've objected to that, and I would like to

Vol. R. 10273-43

do the same. I think fair is fair. It's hearsay, and it's inappropriate.

MR. CHRISTENSEN: Actually, I don't mind, as long as it goes both ways. If we can use newspaper articles. Because I would like to use some.

MR. CRANDALL: This is relevant to what this witness said, Your Honor. This is impeachment.

THE COURT: Well, counsel, you understand — Mr. Belnap, are you comfortable with it?

MR. HUMPHERYS: It just cuts both ways. That's all we're asking for, is fair treatment on either side.

Q (BY MR. CRANDALL) I'd like to show you a document called The Phoenix Journal.

A Okay.

Q And it shows there the Phoenix rising from the flames, the logo?

A Sure, yeah.

Q This isn't a newspaper, this is a newsletter by a group that deals with, that dealt with the Oakland Fire?

A Got me. Never heard of The Phoenix Journal. If it's not a newspaper, I don't know what it is. I've never seen it before.

Q Well, let's look at it, then. You know it's

Vol. R. 10273-44

not a newspaper. It's not from Phoenix. It's a California product.

A Okay. I didn't know. You didn't say.

Q See, "Renewal and rebuilding in the East Bay Hills," is the subtitle?

A Right.

Q And it's in Oakland, California, as we see up on the top?

A Okay. But again, this is, I live in the area. I've never heard of this, so I don't know where you got it, or whose it is. It doesn't matter. I'm happy to answer your questions.

Q I'm just interested in the facts. Doesn't this indicate that the California insurance commissioner, John Garamendi, leveled precedent-setting charges of widespread unfair claims practices against Allstate Insurance Company?

A It doesn't surprise me. He was a consumer activist commissioner.

Q And, in fact, it says in the second column, here, that — Let's go down to the bottom paragraph. "Garamendi will recommend the maximum penalty under the Unfair Claims Practices Act of a one year suspension of the company's license to sell new, settle new claims in the state, as well as a $1.53 million fine."

Vol. R. 10273-45

A It never happened, did it? It didn't, did it? I worked on these fires, and State Farm also had charges leveled against them for the same thing, as well as a bunch of other companies.

Q I was hoping you'd say that.

A Yeah, I did.

THE COURT: Counsel, just so the court's clear, is this an auto case, or is this a property damage case?

MR. CRANDALL: The Oakland fire.

THE COURT: Just so you're aware that you're opening some doors, counsel.

MR. CRANDALL: I'm aware that the witness testified that there were no —

THE WITNESS: Auto cases, I testified to.

MR. CRANDALL: There were no big fines against big insurance companies in ten years.

THE COURT: Just be aware, you're opening some doors, counsel. I want to put you on notice.

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Vol. R. 10273-46

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Q Now, this is a news release from John Garamendi, and it says, "Garamendi testifies on lessons learned from the 1991 Oakland fire storm."

A Uh-huh.

Q Do you see that?

A Yes, I do.

Vol. R. 10273-47

Q And it talks about one of the worst disasters in the nation, and how twenty-five people were killed, and 3,000 homes were burned. And we recall the terrible scene on the television.

A Yes, I worked on some of those cases.

Q And then it says, "While some insurance dealt fairly and squarely with their policy holders when it came to adjusting claims, others engaged in outrageous and despicable practices, which enraged homeowners and brought the full weight of the department down on them. In one instance, we levied the largest monetary penalty in the department's history, $1 million on an insurance company, after they were charged by us with hundreds of violations." Do you see that?

A I see that part of it, that's right.

Q Let's look at page 2. And then I'll show you the bottom, here, it shows page 2.

A Okay.

Q And it talks about how they investigated the claims, and how they tried to help with all of the problems.

A Okay.

Q Do you see that? And he met with people. Do you see that?

A Do you want me to read the whole thing, or do

Vol. R. 10273-48

you want me to just — Why don't you point it out to me where you say, "Do I see that?" I see a lot of words up there.

Q It says the insurance companies weren't doing all the things we wanted.

A That's your take on it. It would be nice to see the whole document so we can see what it really says.

Q I'll be glad to have you see the whole document.

A I can read it.

Q Look down at the second-to-the-last paragraph in the bottom, "I ordered the department to initiate market conduct examinations on five major companies alleged by policy holders to have acted improperly, one of them being the company that was eventually fined $1 million. I asked all the insurance companies to report to me on their efforts to resolve outstanding issues to the satisfaction of their customers."

And if we go over to page 3, and I'll show you on the bottom, it says page 3, second paragraph, "In September we charged Allstate Company and eight of its agents with 153 underwriting and claim handling violations. We alleged the agents falsely misrepresented policy coverages to fifteen policy

Vol. R. 10273-49

holders, and that the company failed to properly handle the claims of ten other policy holders. Three months later, Allstate paid a $1 million monetary assessment to settle these charges." Do you see that?

A Okay.

Q So?

A Five major companies.

Q Would you agree, then, that your earlier testimony that Allstate got away with the fine and got out of it, was incorrect?

A I don't know for sure if they did or they didn't, based on the newsletter. And again, Allstate's had some fines, but it says they took action against five companies.

. . .

Q (BY MR. CRANDALL) Could you simply answer my question? Isn't it true, now that you see this, that your earlier testimony under oath that Allstate didn't

Vol. R. 10273-50

pay a fine, was wrong?

A I don't know that that proves it. I will check it when I'm back in California if you'd like. And maybe they did. Maybe they did.

Q So Mr. Garamendi's press release is a lie?

A I'm not saying it's a lie. I'm saying maybe they did —

Q In fact, isn't it true that you came in here and recklessly made a statement that no big companies has ever paid a significant fine, when, in fact, you didn't even have the information from your own state?

A That's not what I said. I said it's few and far between. There have been a few big fines. I've searched the records, and I told you about a $3 million one against Allstate that you didn't mention.

This particular one doesn't surprise me, it's a fire case. I searched the auto cases. And now you've kind of opened the door on the fire cases, I think Ina may have to come back and talk about what State Farm did in the Oakland fire.

Q You and Ina, by the way, are pretty good friends?

A No. I know Ina, I respect what she does. I respect she travels around and helps people for free. I've talked to her on a few occasions, I've met her on a

Vol. R. 10273-51

few occasions, and that's about it.

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Vol. R. 10273-56

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Q Now, you know that Mr. Garamendi in California held a number of hearings regarding the earthquake and regarding the fire.

A Correct.

Q And the earthquake was October, '89?

A That's right, the Loma Prieta quake.

Q And for those who aren't in California, it might be the World Series earthquake, or the San Francisco earthquake, but in fact, it was centered out by Santa Cruz?

A Correct.

Q And so Loma Prieta is that area that's by Santa Cruz, California.

A That's right.

Q And you're aware that Ina DeLong testified at hearings before Mr. Garamendi.

A That's right.

Q And you're aware that Ina DeLong turned over

Vol. R. 10273-57

a bunch of paper work to the department of insurance, aren't you?

A I don't know the details of it, I wasn't involved in that part of it. I haven't attended the hearings.

Q But you read the transcript, you told us just yesterday, of the entire trial, here.

A Ina's testimony in this trial? I thought you were asking me about the details of what she did in some other forum. I read her testimony, yes.

Q And she said she turned over a bunch of documents to the department of insurance?

A I don't recall that specifically.

Q Isn't it true that to this day the department of insurance has not levied any fine against State Farm for the way it handled the earthquake, even though Ina DeLong complained?

A I don't know. I suspect that's probably true, because my research has indicated they haven't levied any fines against State Farm for decades.

Q And, in fact, as you know from the documents we discussed today, what happens is the commissioner just comes out, calls a press conference, and levies a fine, and then there's an administrative hearing to determine whether the company has to pay it. Isn't that

Vol. R. 10273-58

how it works in California?

A I don't believe that's how it works, no. In other words, there's different processes that California goes through, hearings, order to show cause. I don't think they just come out into the public and say, "I fine you a million dollars, now let's have a hearing." That's not the way that I understand it works, no.

* * *

Q (BY MR. CRANDALL) Do you have any information that, even after considering Ina DeLong's time, the insurance commissioner, John Garamendi, even ordered hearings on that issue?

A I think that's better addressed to Ina DeLong and Commissioner Garamendi, who I know have a lot of

Vol. R. 10273-59

opinions in this area, including the commissioner, about State Farm.

Q Isn't it a fact that after she appeared on panels with Mr. Garamendi, and after she turned in her documents to Mr. Garamendi, and after Mr. Garamendi and the department of insurance, with all their resources, conducted a market survey, they didn't even call State Farm in for a hearing on that issue, because the market survey proved positive?

A I don't know. You're representing something that I can't verify without looking at it. But it doesn't surprise me, because it supports my point that you can't take on State Farm. It's David versus Goliath for any department, including California.

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Vol. R. 10273-178

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom. We'll be in recess for half an hour.

Vol. R. 10273-179

MR. SCHULTZ: Can we make a record real quick?

THE COURT: You may.

MR. BELNAP: Last night when we were talking about the fact that evidence was not going to come in of the settlement in the Singh case, and counsel agreed they were not going to pursue that, I think we made it clear, but I just wanted to state for the record, we were not waiving our prior objection to the fact that the Poston case was talked about. We took that up with the court before that was gone into, and we still object to that.

And I think the record's clear, but I just wanted to make it clear that we're not waiving our objection to the fact that was brought up.

THE COURT: I think you raised it yesterday, and you were going to present the court with a proposed jury instruction that would go to that issue.

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Vol. R. 10273-269

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REDIRECT EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10273-273

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Q . . . There was talk about how much space all of these documents take. You mentioned that State Farm had recently come to your home and copied all of these tens of thousands of pages of documents.

A Right.

Q How were they copied? I'm not asking you the mechanics, but how were the documents stored? In what way?

A An optical disk.

Q All right. Now, can you show the jury, if

Vol. R. 10273-274

you can, by demonstrating, how much space an electronics storage disk takes, when compared to all of these boxes behind us?

A It wasn't very much. I don't remember, but it was just a little bit, a little bit of space.

Q You mean all of these documents, tens of thousands, can be stored in a small little disk?

A That's my understanding, yeah.

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Vol. R. 10273-275

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Q (BY MR. HUMPHERYS) Let me ask you a couple more things. He asked you whether the claims superintendent's manual has been superseded, and the Excess Liability Handbook, and some of the other written

Vol. R. 10273-276

documents.

A Right.

Q Mr. Prater, have you seen any publications from State Farm instructing their employees not to engage in the offending portions of these manuals, as opposed to a memo simply saying, "These manuals have been withdrawn"?

A Not that I recall, no.

Q Why is it important to either send out such a notice, or not?

A Because once they've been trained and indoctrinated in one method over a period of time, and those people have trained all of them, it takes a real big effort to retrain them all.

Because you just don't stop the ship that's going out this way by sending out a memo. That's why they had to send out a second one. And I don't think it's done any good. I think you'd have to go back to claim schools.

And I've recommended to State Farm in the past that a good start, and this is for State Farm's claims management to know, would be to get a little name tag on each claims person's desk, and put there, "We're here to pay claims," and start readjusting the attitude. That would be a good start.

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Vol. R. 10274-4
SALT LAKE CITY, UTAH; JULY 5, 1996; A.M. SESSION

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WENDELL E. BENNETT
called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, resumed the stand and was examined and testified further as follows:
DIRECT EXAMINATION BY MR. CHRISTENSEN:

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Vol. R. 10274-55

* * *

Q Now, you retained Dahle on September 28th, '81. Does that sound right?

A It would be right close, there.

* * *

Vol. R. 10274-58

* * *

Q Okay. At least from looking at your own time records, it looks to me like you met with him on that same date, January 25th. You then met with him again the end of March, on March 22nd, '82; isn't that true?

A That's right, yes, sir.

Q And you tape recorded that meeting, because

Vol. R. 10274-59

it was easier for you to tape record it than sit and take detailed notes?

A Yes, because it was intended to be a "let's discuss this, let's discuss that, let's try this on, let's try that on." So I felt like I could benefit more from it and understanding it more by tape recording it.

* * *

Vol. R. 10274-66

Q I'm moving to page 138. Dahle says at one point, "I realize there's not much to go on, here, but I've worked this sucker 9,000 ways."

He was having real difficulty coming up with numbers that didn't show Campbell was at fault, wasn't he?

A Nope.

Q Page 140. Mr. Dahle says, "I feel that I personally — You haven't asked for my opinion."

And I find that curious, Mr. Bennett. Didn't you hire Mr. Dahle for his expert opinion?

A Yes.

Q "I feel that I personally — You haven't asked for my opinion, but I think that, yeah, Campbell did look, and it was clear, and he pulled out, and he didn't look for three or four seconds, and when he did, here comes Ospital, and it's all over with."

A That's what he said.

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Vol. R. 10274-70

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Q In fact, as you drove back to your office from meeting with Mr. Dahle in Logan, you dictated a memo that was typed and put in your file, didn't you?

A I did.

Q This was dictated within an hour or two after your meeting with Dahle, or less?

A It was dictated on my way back to Salt Lake from Logan.

Q You start this out by saying, "Bob Dahle can be used to good effect at trial of this case. However, we've got to go over his testimony with him a number of times and have him avoid saying things like, 'Campbell was right in the thick of it,' or 'Campbell caused the accident,' things like that."

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Vol. R. 10274-73

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Now, isn't it true that Mr. Campbell, in his own deposition, his own sworn testimony, admitted that he'd gotten back to his lane about a second before Ospital passed?

A That's what he said.

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Vol. R. 10274-91

* * *

Q And Mr. Bennett, State Farm not only had this opportunity to join in settlement, but probably had at

least a half a dozen other chances to settle within Campbell's policy limits before the excess verdicts; isn't that true?

A That's correct.

Q And every time State Farm refused to do it.

A That's right, the case was not settled.

Q And they never offered a dime.

Vol. R. 10274-92

A That's correct.

Q And that was true right up through trial.

A That's right.

Q There were several chances, even as the evidence unfolded at trial, that State Farm had to settle, and wouldn't do it.

A I think every morning Mr. Humpherys would say that to Mr. Campbell and I.

* * *

Vol. R. 10274-102

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Q Instead of telling Mr. Campbell that he had nothing to gain from a trial, and that it was totally in his best interest to settle within the policy limits, you told him that he essentially had no risk, didn't you?

A I didn't tell him he had no risk.

Q You told him he had 5 percent, a 5 percent chance of being found 5 percent at fault, didn't you?

A That was what we talked about when he was in my office after a return from his mission.

Vol. R. 10274-103

Q And you told him he had plenty of insurance.

A That's what I felt at that time, and that's what I told him.

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Vol. R. 10274-110

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Q (BY MR. CHRISTENSEN) All right, let me move to another part of Mr. Slusher's deposition, or deposition summary. You knew, as you reviewed this case, Mr. Slusher was very seriously injured, did you not?

A Yes, sir.

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Vol. R. 10274-114

* * *

Q No question Mr. Slusher was very severely injured, is there?

A No, I've never questioned that, sir.

Q His medical bills, even not counting the free care he got, were almost as much as Mr. Campbell's insurance limits.

A My recollection is he had about $20,000 in bills.

Q Now, as you did the discovery in this case, you also learned that Todd Ospital had been a very unusual young man, didn't you?

Vol. R. 10274-115

A Well, I don't know if he was unusual. I thought he was a fine young man.

Q In your entire career have you ever had a case where a young person that was killed had been a Sterling Scholar, with a 3.96 grade point average, senior class president, I think he was the point guard on the basketball team. Have you ever seen that combination in a case that you've handled, where someone young with that much potential was killed?

A Well, not that had that kind of a grade point and was a Sterling Scholar and a point guard, no, sir. I've had other cases involving very upstanding people that have been killed, unfortunately.

Q I'm looking at the documents from your own file you obtained through discovery. There's some absolutely glowing letters, here, from coaches, teachers, supporting his application for Sterling Scholar, aren't there?

A Yes. He was a very fine young man, I'm sure.

* * *

Q Now, you met with the Campbells on two occasions just before the trial in '83.

Vol. R. 10274-116

A I did.

Q On August 30th and September 7th.

A That's correct.

Q And you told them that they had absolutely no risk for any responsibility for Todd Ospital's death, didn't you?

A I told them that, based upon my analysis of the liability in this case, I didn't think they would be found at fault for that at all, because I felt Mr. Ospital was either 100 percent at fault, or very close to it.

Q You told them more than that. You said it just would not happen that there would be any responsibility for Todd Ospital's death, didn't you?

A I told them that that was my opinion, that under the facts we had, that he was so grossly negligent, that they would have no exposure.

Q In fact, you said in your wildest dreams you could not imagine that they would have any risk for Todd Ospital; isn't that true?

A That's probably some words I would use, because that was my feeling.

Q And then you told them, with respect to Slusher, they had a 5 percent chance of 5 percent responsibility, right?

Vol. R. 10274-117

A I believe I said five to seven.

* * *

Q All right, I'm looking at your trial

Vol. R. 10274-118

testimony from last October.

A Okay.

* * *

Q (BY MR. CHRISTENSEN) The question was asked, "Okay, and in spite of your knowledge of that law, and that there was some evidence to that effect, you told Mr. Campbell that there was only a remote possibility that any fault would be found on his; isn't that true?"

And would you read your answer, please?

A "I told Mr. Campbell, after reviewing all of the van people's testimony, and his own and

Vol. R. 10274-119

Mrs. Campbell's, that I saw that there was some possibility, I think about 5 percent chance, they would find him at fault, and not totally at fault, about 5 percent chance. They might find him 5 percent at fault, was my basic bottom line. And that's what I believed, based upon my assessment of the evidence after I completed

discovery and spoke with him on two occasions in late August and early September, 1983.

Q So there you said only a 5 percent chance of being found any fault, and if you get some fault, it would be about 5 percent.

A That's what I said.

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Vol. R. 10274-121

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Vol. R. 10274-123

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Q Okay. So we're talking, this is covering your conversations with Mr. Campbell before trial. Your answer was, "I told him exactly what I testified to, Mr. Christensen."

And then I said that, "If he'd got any fault at all, it would be 5 percent, and his limits ought to be plenty to cover it."

And your answer was what?

A "That's what I told him, basically."

Q And then I asked him, "And you told him under

Vol. R. 10274-124

your analysis you saw that he had no fault at all, and his passing had nothing to do with this accident."

A "I told him that was my best understanding of the evidence from what I had seen."

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Vol. R. 10274-126

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Q (BY MR. CHRISTENSEN) Now, as far as you can recall, Mrs. Campbell was present at the meetings that you had with Mr. Campbell; isn't that true?

A She was present in almost every one. I know she was there on September 7th, and my best impression she was there on the August 30, too.

Q And you not only expected Mr. Campbell would rely on your advice and your input, but you expected that she would too, didn't you?

A Well, I wasn't representing her, but she was always present, and they seemed to do things together, so I assumed that she was listening. She wasn't being

sued, though. She was not in this lawsuit.

Q But she was certainly going to be affected if there was an excess verdict.

A I would assume she would be.

Q Now, Mr. Bennett, we discussed this earlier,

Vol. R. 10274-127

and I don't want to go back and rehash it, but I need to come back to it for a moment. You had told the Campbells early on that your ethical duties ran to them, and that even though State Farm was paying you, you would look out for their best interest.

A I did.

* * *

Vol. R. 10275-4

SALT LAKE CITY, UTAH; JULY 9, 1996; A.M. SESSION

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Vol. R. 10275-105

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MR. HUMPHERYS: . . . His deposition was taken on February 22nd, 1994, and he was designated as State Farm's 30-B-6 witness for all purposes.

MANUEL MENDOZA called as a witness by and on behalf of the Plaintiff through deposition, having been first duly sworn, was examined and testified as follows:

MR. HUMPHERYS: On page 6, starting at line 6.

Question. "Your employment?"

Answer. "I'm employed by State Farm Mutual Automobile Company."

Question. "For how long have you been so

Vol. R. 10275-106

employed?"

Answer. "Thirty-five years."

Question. "What is your current job capacity? Your job title?"

Answer. "I am an attorney for State Farm."

Question. "How long have you been claim counsel?"

Answer. "Since 1985."

Question. "In what department do you work? The legal department?"

Answer. "The general claims department."

Now, turning to page 310, line 5.

Question. "Given your claims experience, have you, would you reasonably anticipate that a significant excess verdict against an insured would be a traumatic and stressful situation?"

Answer. "Traumatic and —"

Question. "Stressful."

Answer. "To whom?"

Question. "To the insured?"

Answer. "Yes, I would say it would be traumatic."

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R. 10275-111

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ELLIS L. CHRISTENSEN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

* * *

Q . . . Prior to your retirement,

Vol. R. 10275-112

Mr. Christensen, who were you employed by?

A State Farm Insurance Companies.

Q And did you work for State Farm Mutual Automobile Company?

A Yes, sir.

Q Can you tell the jury the date that you began working for State Farm, and how long you worked for State Farm?

A I began October 15th, 1964, and I worked for State Farm for thirty years.

Q Where were you employed when you worked for State Farm?

A I began my employment in the Ogden, Utah, claims office, and then in January of 1968, I was moved to the Logan, Utah claims office.

Q And did you remain in the Logan office until you retired, then?

A Yes, sir.

* * *

Vol. R. 10275-123

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Q (BY MR. SCHULTZ) Let me just ask you this question, Mr. Christensen. In your handling of claims, can you tell the jury whether you were trained to pay more or less, based on considerations other than what the value of the loss was?

A No, sir.

Q Whether the person was educated or uneducated, did that make a difference?

A No, sir.

Q Whether the person was of a lower social economic status, were you taught to pay less?

A No, sir.

Q And did you pay less for those reasons?

A No, sir.

Q Did you pay less if a person making the claim was a woman?

A No, sir.

Q There's been some testimony in this case,

Vol. R. 10275-124

Mr. Christensen, from another witness, that State Farm taught its claim handlers to prey upon the weakest of the herd in handling claims. What's your experience been in that regard?

A To pay what was owed to the claimant or the insured, no matter who they were.

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Vol. R. 10275-130

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CROSS BY MR. HUMPHERYS:

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Vol. R. 10275-135

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Q Now, let me see if I understand. Are you telling the jury that in the entire thirty years of work at State Farm, that you always paid fair value, without exception, and not a penny more, not a penny less?

A Yes, sir.

Q There was never a claimant or an insured that ever got less than fair value from you; is that what you're saying?

A That's correct.

Q You can state that emphatically, even though you may not remember all of the cases you've been involved in?

A I certainly have. I have a clear conscience on all of them.

Vol. R. 10275-136

Q All right. Well, let's talk about that for a minute. You mentioned about an appearance allowance. Now, if I understood what you said right, you said that you would go to a claimant and tell the claimant that if they wanted to receive money instead of the repairs, you

would only give them 50 percent of the value; is that right?

A Of that particular item.

Q Now, Mr. Christensen, isn't it true that a claimant would be entitled to 100 percent if he were to insist on it?

A Absolutely.

Q But you would represent that you would only give 50 percent.

A As an appearance allowance.

Q Right. And you gave 50 percent appearance allowances from time to time, didn't you?

A If that was agreeable with them.

Q Now, isn't it true that that's less than fair value, Mr. Christensen, by 50 percent?

A No, sir, because they still had the bumper, and they got paid for the minor damage, or the scratch that was there, which was their decision.

Q Now, Mr. Christensen, under the policy, I'm sure you've read it before, aren't they entitled to the

Vol. R. 10275-137

cost of repairs, full value for cost of repairs? If it cost $100 they'd be entitled to $100, wouldn't they?

A Yes.

Q And if an insured wanted to take the money instead of the repairs, he had that choice, didn't he?

A Yes, he did.

Q And he was still entitled to the $100, wasn't he?

A Yes, sir.

Q But you would only offer 50 percent.

A But if he insisted, I paid him for the full value.

Q So there were some that you paid the full 100 percent.

A Yes, if that was their desire.

Q But then you would represent to all of them that it was your customary practice to only pay 50 percent; is that correct?

A If they wanted to accept it, yes.

Q Okay. Now, that's not fair value, is it?

A Yes, sir.

* * *

Vol. R. 10275-181

ELTON "BUCK" MOSKALSKI called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Moskalski, will you please tell us what your name is, and then what you go by as a shorter name?

A My real name is Elton Moskalski, I travel under the alias of Buck, as in male deer.

Vol. R. 10275-182

Q Would you spell your last name?

A That's M-O-S-K-A-L-S-K-I.

Q Thank you. Mr. Moskalski, will you tell the jury who you work for, and what your title is.

A I work for State Farm Mutual Automobile Company, and my title is regional vice president, which means I'm the chief executive officer for the states of Colorado, Wyoming, and Utah.

Q And is that known under State Farm parlance as an RVP?

A That's right, regional vice president.

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Vol. R. 10275-192

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Q All right. I'd like to talk about, we've discussed the setup and a brief outline of the region. I'd like the jury to understand a little bit more about what is an RVP, and what your responsibilities are. As an RVP, do you have the right to direct the operations, the underwriting, the sales and claims in this region,

Vol. R. 10275-193

Mountain States?

A There's no question about it, that's a responsibility that I'm given when the board of directors appoints me as a chief executive officer, here, and it's a responsibility that I'm accountable for during and at the end of the year.

Q Now, in the course of your reporting, who do you report to, Mr. Moskalski?

A I report to the president of the company and the board of directors.

Q And that, in this company, is Mr. Rust, Junior?

A Ed Rust, Junior would be the chief executive officer in corporate, and he and I both report to the board of directors.

Q As this jury listens to the testimony from you and other witnesses, is there anybody higher in the State Farm organization responsible for the claims that happen here in Utah, directly responsible, than you, Mr. Moskalski?

A No, I have the total responsibility for how the claim operation takes place. Everything that operates within these three states, outside of the broad general guidelines that I talked about earlier, happens to be my responsibility.

* * *

Vol. R. 10275-199

Q I want to talk to you, Mr. Moskalski, about what this jury has heard testimony about that is known as the PP&R program. I assume you're familiar with those?

A Yes, I am.

Q That acronym? First of all, were you with the company before 1979, when the program, the PP&R program was instituted?

A Yes. My memory is that we, even before the performance, planning and review program that you referenced, we had a program that was called development guide that we utilized.

Q And looking back on that program before 1979,

Vol. R. 10275-200

and then having lived with the PP&R program as it's evolved over the years, can you tell the jury if there were some reasons that you observed, as a manager, why the PP&R program came into being, as you understood it.

A Well, the development guide, it goes back many years, was more geared toward looking at individual employees in terms of their development, kind of educationally. And it didn't really deal with those things that we normally associate with management by objectives, now.

Employees began telling us, "I'm really not interested in hearing about my developmental activities. I really

want to know what's expected of me as an employee, how I'm doing every year, and I want to have an objective basis by which you measure me at the end of the year."

And so the performance, planning and review process picked up on those management by objective principles, and that's what the program was when it was first introduced.

* * *

Vol. R. 10275-203

Q Now, are you aware, Mr. Moskalski, that there has been any changes in this program as it's evolved since 1979, with respect to--let me be specific, so that I'm not just being ambiguous--with respect to cost goals?

A Yes. Yes, there have been revisions. As we started out, as I recall the original author of the document had gone out into the field and asked people, "Tell me what kind of goals you would set for different job classes."

And based upon that input there were some specific references to goals in the initial document,

Vol. R. 10275-204

and then that became evolving in terms of the two other revisions, with the 1992 revision completely taking those kinds of goals out of the process.

MR. BELNAP: I'd move to admit 142, Your Honor.

THE COURT: Any objection?

MR. HUMPHERYS: None, Your Honor.

THE COURT: Received.

(WHEREUPON Exhibit Number 142 was received into evidence.)

Q (BY MR. BELNAP) Mr. Moskalski, turning to the second page of Exhibit 142, "What to avoid," is there a statement on this document at the bottom that indicates, "Goals which affect policy costs are inappropriate and not within the broad control of employees. The State Farm philosophy is to pay every penny owed, but not a penny more."

A That would be a definitive statement of the decision that was made to take those kind of average paid cost goals out of the process for claim handlers.

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Vol. R. 10276-4
SALT LAKE CITY, UTAH; JULY 10, 1996; A.M. SESSION

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ELTON "BUCK" MOSKALSKI the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Vol. R. 10276-14

Q . . . We talked to the jury yesterday about the fact that, with respect to the PP&R program, that as of '92, and then reinforced in '94, it was indicated that average paid cost, or indemnity reduction goals were not appropriate for claim representatives and claims people at the handling level. Do you recall that discussion?

A Yes, I do.

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Vol. R. 10276-16

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Q Now, Mr. Moskalski, before the pronouncement in '92, and the '94 pronouncement, this jury's been told and been shown some PP&Rs where a claims superintendent, or some claim representatives from California or, I think it was California, had some goals to reduce indemnity payments. Some of them would say, "I'm going to attempt to hold the line," or, "I'm going to attempt to reduce by a certain percentage," or "I'm going to attempt to hold the increase to a certain percentage." Have you seen goals like that in the past?

Vol. R. 10276-17

A Yes, I have.

Q In your understanding, in terms of what has been taught back in those days, when you might see these goals, can you tell the jury what your understanding of that was in terms of the impropriety or the propriety of doing that, if it was combined with some of the things that you talked about just a moment ago?

A As I recall, when we introduced that program early on, and it had those management by objective

standards in it, and that you had to have things that were measurable, our intent with those goals was to make them awareness goals. The goal itself, sitting out there, reduce average paid costs, was intended — or manage average paid costs, however it read — was intended to make people aware of the fact that there are costs we need to manage.

But as we introduced the program, we explained to management folks, or at least I did, that they need to identify the activities underneath that goal that will lead to that result, i.e. managing costs.

For example, better investigations, better negotiations, schools that we could send people to, to make them better at their job, that might end up with that kind of result. But we always tried to tell them that you needed to identify the specific activities that

Vol. R. 10276-18

ought to be engaged in.

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Vol. R. 10276-22

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Q (BY MR. BELNAP) Mr. Moskalski, the question, if I recall it correctly, was, can you tell this jury whether or not there was an intention in the implementation of the program that a claim representative would reduce any particular claim that was being adjusted?

A That was never the intent of the program. The intent of the program was to create awareness that that was an obligation we have to our policy holders to manage costs, but there was never any intent to reduce

Vol. R. 10276-23

the amount of money that would be paid to an individual claimant.

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Vol. R. 10276-85

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Q (BY MR. BELNAP) Mr. Moskalski, when we took a break we were talking about the suit report process that you have followed in the region, and your awareness of cases, and specifically when we broke we were talking about excess cases that have occurred in the state of

Vol. R. 10276-86
Utah.

Are you aware, Mr. Moskalski, if there have been five excess cases that have occurred since you became the regional vice president in Mountain States in 1989?

A Yes, I am.

Q Now, with respect to those cases, Mr. Moskalski, can you just simply tell us whether or not State Farm stepped forward and resolved those cases by paying them?

A In all five cases we did.

Q Okay. Now, why would State Farm do that, Mr. Moskalski, when an insured, a person, a man or woman, or whoever the insured is, has bought a certain dollar limit, known as a policy limit, and when a case is tried, why would State Farm, as you've indicated, step up and resolve those cases?

A I think there are two reasons. Number one, we do owe a duty to those policy holders. When we evaluate a case, and we determine it's one that needs to be tried, we recognize that there's certain consequences that go with that. There's certain risk any time you go to trial. And that stepping forward and paying those judgments when we've guessed wrong is just an acceptance of those consequences and taking care of our policy
Vol. R. 10276-87
holders.

Q Now, with respect to those cases, Mr. Moskalski, when were those — Were those payments made within a given time — Let me see if I can rephrase it. In those five cases, were they resolved and paid before there was an appeal taken?

A My memory of the five is that there was discussion of appeal, I don't recall any that actually had an appeal, and they were payments and resolutions taken shortly after the verdict, or the entry of the judgment.

Q Was there, to your knowledge, Mr. Moskalski, did any of those insureds that had an excess result lose any of their personal assets?

A Not in that case, and I'm not aware of any case where an insured has ever lost any property due to a levy from an excess judgment.

Q Now, having stated, Mr. Moskalski, the handling of these cases that have happened since you've become the regional vice president, if this company tracks statistics that we've talked about, can you tell the jury why there isn't a statistic, or some sort of report in this region, that lists, on a report, an excess case?

A Well, the excess cases are part of the normal
Vol. R. 10276-88
reporting of bodily injury cases that we do. In this region, they've just been insignificant, you know, over a period of several years, 29,000-plus claims, and five cases since 1989 that involved excess judgments.

If I deemed it to be a problem, I would have a reporting system. But that's such an infinitesimal number that — And I get the opportunity to follow up on the individual ones, individual cases. I just don't see the need to track it.

Q Now, as the regional vice president, Mr. Moskalski, do you have the responsibility and the ability to meet claims issues that may have arisen out of any of these excess cases?

A That's my ultimate responsibility, that's what I'm charged with.

Q And with that responsibility, Mr. Moskalski, do you have the ability to set policies within the region with respect to the handling of excess cases?

A Yes, I do.

Q Can you tell the jury, with respect to the handling of excess cases, you've told them that they have been paid and satisfied in those five instances, sometimes before even a verdict, or a judgment was entered, I think was your testimony.

In the future, Mr. Moskalski, as you deal in
Vol. R. 10276-89
this region with insureds that are going to have a case of theirs go to trial, can you tell the jury what State Farm, in addition to that, is going to do?

A Well, as is reflected in those five cases that occurred since I became regional vice president, we did step forward, recognized the consequences, and we never had an insured lose any property as a result of our decision to try a case.

And as I looked at the Campbell case and I tried to figure out, you know, what could we have done different in the Campbell case that would have avoided —

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Q (BY MR. BELNAP) Mr. Moskalski, I think the question was, from this point that you were answering, from this region, what is the policy of this region that you have set that you're going to do with insureds in the future on these cases that go to trial and at risk?

A You just want the policy, not the reasons?

Q I want the policy first, and then the

Vol. R. 10276-90

reasons.

A The policy is that, in light of our history, we will give the insured a letter, when we make the decision that a case is one to be tried, the policy holder, ahead of that trial, will be given a letter saying that as long as they continue to do their duty under the policy, and that is to cooperate and assist us in the trial of the case, and there's no collusion, and that we have, in fact, gotten a demand within the policy limits, then they will get a letter that says, "We accept the financial responsibility that may result from this decision."

And I guess you'd call it a peace of mind letter, that will give the policy holders, they never have to worry from that point, forward.

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Vol. R. 10276-124

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CROSS EXAMINATION BY MR. CHRISTENSEN:

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Vol. R. 10276-127

Q You were deposed not too long ago, on April 26th, 1996.

A That's correct.

Q I took your deposition. In that deposition you stated under oath that you found nothing wrong with what Mr. Noxon had done in handling the Campbell file, didn't you?

A I told you I was not aware of anything that I knew was wrong.

Q And you said that Noxon, neither Noxon, Brown, or Summers had ever been reprimanded for anything done in the Campbell file, didn't you?

A Yes, I did.

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Vol. R. 10276-133

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Q Now, you have indicated that you handle everything on a regional level. That the home office doesn't need to get involved in claims. Is that your testimony?

A That's my responsibility.

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Vol. R. 10276-142

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Q Now, let me move to another area. I'm going to show you a document this jury's seen before, we've been calling it the Samantha Bird memo. At the time that this memo was written on April 6th, 1990, you were the regional vice president over in Colorado, right?

Vol. R. 10276-143

A That's correct.

Q Janet Cammack worked for you?

A She — If you put all of the employees in the region work for me, and you say she worked for me, in that sense she did.

Q She was right in your office, wasn't she?

A She was in the regional office with 800 other people.

Q And she was an attorney right in that office.

A She was a lawyer, along with other lawyers.

Q And she wasn't just one of 800 employees. She's somebody that you worked pretty closely with, wasn't she?

A I had worked with her on this records management, yes.

Q In fact, she was a good friend of yours.

A I would call her an acquaintance, yes.

Q She has dinner with you and your wife at your house?

A As other staff members do.

Q You and Janet Cammack had worked together in Texas before you both got sent to Utah; isn't that true?

A We didn't get sent to Utah. I came to Utah, and she applied for a transfer later.

Q Well, you worked with her in Texas.

Vol. R. 10276-144

A Yes, she was in practice, and then came to work with us as a claim attorney in Texas.

Q And you were the deputy regional vice president in Texas from '85 to August, '89; is that right?

A Yes, sir, I was.

Q You'd had some bad faith cases in Texas while you were there, hadn't you?

A I don't recall any bad faith cases.

Q No bad faith verdicts, you recall?

A Not as I sit here today, no.

Q No punitive damage verdicts you remember out of Texas?

A That's been my testimony all along, I don't have any recollection.

Q You know now, since you said that in your depo, that we found a bunch of them in Texas, don't you?

A I don't know that. You're making that assumption.

Q Well, I'll get into those with you later.

A Okay.

Q Are you denying that, as of April 6th, 1990, that you'd had one or more bad faith cases in Texas where you'd had to produce old claims manuals and so forth?

Vol. R. 10276-145

A What you see there is not what Janet Cammack and I talked about.

Q Well, and I want to cover that with you. And even though we've been through it before, I want to read part

of it. It says, "Yesterday in the staff meeting we talked about the need to purge our desks of old memos, notes, and procedure guides. With the increase of bad faith suits being filed against State Farm, it is important that you get rid of all your old stuff. Know that you have lurking around in your drawers and file cabinets.

"Please get rid of all old memos, claim school notes, old seminar or claim conference notes, and any old procedure guides you may have. They are trying to avoid having to come up with old records when the request for production of documents comes in and they request all training manuals, memos, procedure guides, et cetera, that are in the possession of your claims reps and management. Apparently they had a request like this in Texas and each person had to surrender all their old junk." That didn't happen in Texas while you were there?

A I don't have a recollection of it, no.

Q Then it goes on to say, "I guess corporate's not even going to keep old CPG guides, old claim

Vol. R. 10276-146

manuals, et cetera." That's a true statement. Corporate's gotten rid of all that stuff, haven't they?

A You'll have — What do you mean, "old stuff"?

Q Any manuals that aren't current, they claim that they've destroyed, don't they?

A I think our position has been that we had a system in place that allowed claims people and anybody who had manuals to get revisions to it, they were to delete and destroy that and replace it with the current material.

Q I'm talking about corporate. Corporate headquarters. Wouldn't it make sense for there to be at least one copy of every version of the manual somewhere in this huge company?

A If you assume that there's an obligation on the part of a company to keep documents around that network attorneys can subpoena and use and portray to juries as being the current procedures of the company, that just doesn't make sense, because then we'd never throw anything away, because there could always be

some likelihood that some lawyer, somewhere, would want to sue us and look at an old document.

Q So you do admit you were getting rid of evidence.

Vol. R. 10276-147

A No, that — I didn't admit that at all, and I don't know that what is referred to up there is evidence. That is, it appears to me to be Samantha Bird talking to the people in her unit. That's not Janet Cammack talking.

Q All right, let's go back. "We will only have what is currently in effect. That way if they subpoena our claim manual for U claims for '87, for example, we'll say we don't have it. This should be easier than trying to produce it or having to defend it."

Now, Samantha Bird has testified here under oath that Janet Cammack came and gave those very instructions, just the day before. In fact, we produced some handwritten notes of Samantha Bird and some meeting minutes taken by an Elaine Rigler of this same meeting.

Now, isn't it true that you sent Janet Cammack to Utah to keep this jury from seeing the things described in that memo?

A That's a blatant misrepresentation of what I've told this jury earlier. I told them exactly what I had asked Janet to do, and that was to establish a system that would allow us to respond to subpoenas accurately and completely.

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Vol. R. 10276-156

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Q Now, you were designated at your deposition as a 30-B-6 witness to speak about awareness of punitive damage awards; isn't that true?

A Yes, it is.

Q That means you're not just speaking for yourself, but for State Farm when you're a 30-B-6 witness. Do you understand that?

A To the extent that I have knowledge.

Q Don't you have an obligation, if you're a

Vol. R. 10276-157

30-B-6 witness, to take reasonable steps to determine

what knowledge the organization has? Do you know that?

A When I came in to give this testimony I was not aware that I was to conduct a massive search around the country to find records of some sort.

Q But you were put forth by State Farm to talk about awareness of punitive damage awards, right?

A The systems, whether or not there is a system in place to track them was my understanding.

Q Then you proceeded to say that you didn't know of any punitive damage awards against State Farm, didn't you?

A I didn't, and I also testified about the systems that we had, which were really none, that we don't track them. They're part of the BI suit reporting system.

Q That's still your testimony, you don't know of any punitive damage awards against State Farm?

A None that I can specifically point out and say, "Here's a punitive damage award."

Q And you also said you knew of no bad faith verdicts against State Farm, didn't you?

A You'll have to show me my language, because "bad faith" is a particular term.

Q All right, turn to page 73, if you would.

Vol. R. 10276-158

I'm going to read, beginning on line 6.

Question. "What bad faith verdicts are you aware of against State Farm throughout the country?"

Answer. "I don't have any personal knowledge of bad faith cases from around the country."

Is that still your testimony?

A Yes, it is.

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Vol. R. 10276-160

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Q I assume you've been made aware by now that, since your deposition was taken, we learned through Mr. Prater from some research done in another case, I think that was Smith versus State Farm in West Virginia, that in a time frame from '87 to '95 a database that was researched showed fourteen cases from the state of

Texas where there had been findings of misconduct against State Farm. . . .

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Vol. R. 10276-161

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Q (BY MR. CHRISTENSEN) All right, I want to ask you about some bad faith punitive damage cases out of the state of Texas.

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Vol. R. 10276-165

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Q You have no knowledge of any of the other cases where State Farm was found guilty of bad faith or

Vol. R. 10276-166

punitive damages in Texas?

A I've already testified that way, and that's the truth.

Q You don't question there are a bunch of them, do you?

A You've read the cases. I have to assume that that's valid legal research.

Q I thought you testified earlier how concerned you are about these cases, and how closely you follow bad faith cases.

A I think you and I both know that I can't follow cases from around the fifty states. I try to keep up with what's going on in the region I have responsibility for.

Q But these were pending in Texas when you were there.

A I don't know if they were or not. I have no recollection of them.

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Vol. R. 10276-168

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Q Now, you claim that there's no reporting or record kept of excess verdicts, punitive damage verdicts, or bad faith verdicts on to the home office; isn't that true?

A I've not only claimed, that's the way it is. That's the truth.

Q You don't tell the home office about excess verdicts, punitive damage verdicts, or bad faith verdicts?

A Do you mean — Do you mean I have a reporting system, where I report to the president's office, or the board of directors? I do not.

Q You don't report it on to home office at all,

Vol. R. 10276-169

do you?

A No, I do not.

Q And you're aware State Farm claims that at the home office they don't keep a record of punitive damage awards, or excess verdicts, or bad faith verdicts.

A I'm aware that they do not.

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Vol. R. 10276-171

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Q The truth is, the home office doesn't want a record of punitive damage judgments; isn't that true?

A I don't know what there is, what their motivation is. I just know we don't do it, we don't have a program for doing it.

Q You don't report punitive damage judgments to the home office.

A I have no system to report punitive damage judgments to home office, or verdicts.

Q And if this jury awards a punitive damage verdict against State Farm, you won't report that, will you?

A I have no system to report punitive damage awards. That's my responsibility.

Vol. R. 10276-172

Q If it's big enough, you'll report it, won't you?

A I didn't say that I wouldn't talk to corporate about a punitive damage case. I said I had no reporting system. If someone asked me if I had something like that, I would respond to it.

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Vol. R. 10276-174

Q Let me show you one in the Campbell case. It is a little hard to see, I'll get out the other copy. I tried to mark it with yellow and it just smeared it. See, on the CMR on the Campbell case done after the Logan trial it says, "Excess loss," and there's a check mark, there.

A If that's what it says, I'll respond to it. I just can't see it.

Q Well, let me show it to you, because I think

Vol. R. 10276-175

this is important. Can you read that one any better?

A Yes, uh-huh. There is an "X" there.

Q So State Farm does keep some sort of record on excess losses, don't they?

A Well, that's a misrepresentation. Because what that is, is an indicator that goes into the claim master record, the computer system that we're required to keep when a case is settled, or that a reserve is set above the financial responsibility limits that are set in the state. Like, for example, if it's 25-50, and a reserve is set above that, it's a regulatory item that we have to report.

Q But if you can keep track of that, you could keep track of excess verdicts like were rendered against the Campbells, couldn't you?

A You're asking me to conjecture. Excess verdicts are just not a problem, as I perceive them. I see no reason to keep track of records just so that you have something that you can subpoena.

Q There's certainly no record kept at State Farm, or any reporting of what kinds of things happen to people like the Campbells because of excess verdicts, is there?

A I'm sorry, I didn't follow the question.

Q State Farm has no report or record of the

Vol. R. 10276-176

effect excess verdicts have on people's lives that have them rendered against them, do they?

A If you mean that it goes in, I have a report that says, "This is a particular situation that exists with an insured's personal life," I have no system that reports on their personal lives, no.

Q And in your depo you said you didn't have any personal knowledge of it, either, did you?

A No, I don't.

Q State Farm doesn't want to know that, do they?

A I'm here today, and I've been listening to this trial, and I've been reading these file documents. I do have an interest, and I talked about some lessons that I learned

from the Campbell case, and how I responded to them. So you bet you, I want to know.

Q You want to make a good impression on this jury, and that's your motivation for what you've said today, isn't it?

MR. BELNAP: Your Honor, that's argumentative.

THE WITNESS: Well, if I may respond to it. If you think that the decision that I talked about this morning, that letter that we're going to give policy holders when the decision is made to try a case, then

Vol. R. 10276-177

you don't appreciate the magnitude of what I committed this organization to in the three states in which we do business.

Q (BY MR. CHRISTENSEN) Okay, and I want to explore that with you. This peace of mind letter that you've said is now your policy?

A Yes.

Q Now, you've mentioned there are five excess verdicts in Utah since you've been divisional claim, or excuse me, since you've been regional vice president. We haven't gotten to see those files. You're aware of that, I assume?

A You've got a report on them, just as I did. I gave it to you at the time of my deposition.

Q But that's a report that Mr. Kingman wrote up a few days before your depo.

A Mr. Kingman and Mr. Arnold.

Q Is it your testimony that if we did get to see those five files, we'd see one of those peace of mind letters in each one of them?

A I didn't tell you that that peace of mind letter was in there.

Q It's not, is it?

A No, I told you that I could testify, and I still am, that none of those policy holders lost any

Vol. R. 10276-178

property or money as a result of an excess verdict. And I will stand behind that.

Q And none of them got any peace of mind letters, either, did they?

A We were not doing that letter at that particular time. There were a couple of those cases, some assurances given to the policy holder that there was nothing to worry about. But those were post verdict.

Q Is that in writing?

A I'm sorry?

Q Was that in writing? If we had those files, would we see those assurances in there?

A I didn't say it was in writing. I said they were given those assurances.

Q They're not in writing?

A I don't know. The assurances were given — I haven't reviewed those files. I've reviewed the same report that you reviewed, and it talked about the fact that those assurances had been given to the policy holder.

Q Have you ever seen one of those peace of mind letters actually sent out to a policy holder before a trial?

A No, I've told you that that's a decision that

Vol. R. 10276-179

I have made while this has been ongoing.

Q That decision was apparently made since your depo was taken.

A Yes, it was.

Q Now, the jury's also seen this before, I don't know if you have. This is part of State Farm's answers to interrogatories, where we asked State Farm to disclose all of the cases in Utah since 1980 that resulted in an excess verdict. And after an objection, the answer was, "Defendant has inquired of claims management personnel, and they cannot recall any other excess verdicts during the 1980s other than the Curtis Campbell case."

That obviously was not a true statement, was it?

A I think later we went back, pursuant to orders from this court, and did an exhaustive search to uncover those five files.

Q Well, you don't have records.

A That's correct.

Q And you've testified in your deposition you don't have any personal knowledge or recollection of these

cases; isn't that true?

A Yes, it is. I did not have any personal knowledge. I can't be expected to remember every piece

Vol. R. 10276-180

of paper that I read in the course of a day. I don't think it's reasonable.

Q So what we've got is Mr. Kingman and Mr. Arnold came up with some cases and said, "That's it," and we're just going to have to trust them on that; isn't that true?

A They didn't just come up with cases. Those two gentlemen made, particularly Mr. Arnold made a good faith effort, an exhaustive effort, to find every case that you wanted.

Q Well, we've taken his depo, I took it, he said he just asked around, because there are no records.

A That's how you have to go. That's how you have to find them. You have to go into the offices and ask.

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Vol. R. 10276-185

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Q Now, Mr. Belnap showed you yesterday a 1994 memo from Mr. Haines and Mr. Coffey of the home office.

A I recall it.

Q I think it was Exhibit 128. With this kind of a huge financial incentive to keep in mind, let me read this. "It is inappropriate for either the claim representative or claim management to include reduction of claim indemnity costs, pendings, or expenses as a goal, measure of job performance, or as a specific condition for a promotion or merit pay increase."

Is that another way of saying average pay per claim? That is reduction of claim indemnity costs?

A Yes, it is.

Q So we've got average pay, claim indemnity costs. What are some of the other terms that are used for this concept? Severity ratio, is that one?

Vol. R. 10276-186

A Severity would be another term.

Q The claim ratio?

A Well, that's a much broader concept.

Q Now, let me explore this with you. Why is it inappropriate to have a claims representative or claim management to have a goal to reduce average pay per claim?

A As this PPR process evolved with claim people, we recognized that those type of goals which have been termed outcome-based goals could be misconstrued. In fact, there were PP&Rs in which it was misconstrued. Our intent was, I testified earlier, was to make that an awareness goal, and identify activities underneath the goal that would be engaged in, that would have that result.

Over time, as we evolved, we recognized that it was being misconstrued. We corrected it with the PP&R program that was introduced just in front of this, and this memo made it clear that that was applicable to claim management team, as well.

Q So this is bad because it provides some sort of incentive or motivation to claims people to pay less than they owe.

A No, it's — The determination has been made to eliminate from the PP&R process because they could be

misconstrued, and that individual claims people really have no effect on the ultimate outcome of those costs. Their obligation is to handle each claim on its own merits, without regard to those costs.

Q Having the kinds of goals this says is inappropriate is bad practice, isn't it?

A We felt it was inappropriate. As we evolved we said, "What we have done earlier needs to change. We made a mistake with it, people are misinterpreting it, this is our new program." It makes sense to me.

Q That always has been bad practice, hasn't it?

A No.

Q You're prepared to admit that what State Farm has done for a couple of decades was wrong, aren't you?

A I'm not prepared to admit that. I am prepared to tell you that, as those goals were utilized in some instances, it turned out that that was all that was there, they didn't take the extra step and identify the activities

that led to the goal.

Q State Farm's written a book on inappropriate goals, haven't they?

A I assume you have one of the PP&R introductory programs in your hand.

Q I have the booklet that introduced the PP&R program.

A The original book?

Q Yes.

A That was a book that did introduce it. We thought we were doing the right thing then. As we evolved and we saw problems develop, we changed, as any good business would change.

Q That's because this is full of bad practices, isn't it?

A No, we changed because it didn't accomplish what we wanted to do, and it wasn't doing those things. People were misconstruing what we wanted . I wouldn't want to do anything else.

Q A lot of people were treated unfairly on claims because of those kinds of goals, weren't they?

A That is untrue. As I told you before, the objective was to make those goals awareness goals. Our expectation of handlers has been, and always will be, that they have to look at each individual case on its own merits. And we've made it abundantly clear, now, that they should not even have this awareness goal.

Q How about "hold BI paid cost"? Can we add that to our list of something that means average pay per claim?

A I'm sorry, where are you, now?

Q Holding BI paid cost. That's another way of

saying average pay per claim, isn't it?

A Yes, it is. But see that's the beauty of that goal, that's awareness. There it is underlined, and you can go right down under it. This is done perfectly. You can identify those things that you need to be doing.

Q Are you saying this is an appropriate goal, when the year starts, to decide you're going to find prior

damage on a certain percentage of every car that you inspect?

A Can you help me read that? It says "list —"

Q It says, "List prior damage on X percent of all estimates written by a certain date."

A Okay, and what was your question, again? I'm sorry.

Q That's clearly an inappropriate, goal, wasn't it?

A Why? I see no reason, I don't want to be argumentative. But it says, "This is a highlight item, we want to make people aware of prior damage."

Q But shouldn't a person going out to inspect somebody's car be out there to determine the damage, rather than going out there to meet a goal to find prior damage?

A It's a legitimate part of the claim handling

Vol. R. 10276-190

process. As an insurance consumer, I don't want, and I don't think anybody in this room wants, an insurance company that I pay the premiums to, to be paying for damage that was caused by something else. That just doesn't make sense.

Q This is an incentive to find damage where it doesn't exist, isn't it?

A No, it is not. You've mischaracterized it.

Q Isn't that why goals like this are inappropriate?

A No. As I told you, that was the result of an evolution in the goal-setting process and management by objectives process, and we recognized that it was being misused. And we made it clear that they shouldn't be in there.

Q Well, I'm not sure I hear what you're saying. Let me put these back up. Are these appropriate or inappropriate goals, the ones I've underlined?

A Well, you've showed me a claims superintendent/supervisor, and you asked me the question in my deposition, and I told you that I personally did not have any problem with an awareness goal that dealt with those areas, as long as they identified other activities that would lead to that result.

I also acknowledged the fact that there has

Vol. R. 10276-191

been a subsequent memo that says, "These are inappropriate," and I'm willing to abide by that. I do.

Q Are these wrong?

A Under the new guideline, that appears to be, I don't have a name, but it appears to be a claims superintendent, or supervisor, and that is a goal that we made clear in the memo from Mr. Coffey, should not be on there. And I don't know what the date is on that form, but I suspect it's before 1994.

Q This is out of the '79 PP&R booklet. Before we move on, I want to make sure we are tracking on this. Are you willing to admit these were wrong?

A I am willing to admit that that is no longer our procedure, and that we tell our claims management people they should not be utilizing these goals today.

Q They're wrong.

A Today.

Q They were wrong in 1979, weren't they?

A They were not.

Q Now, that sheet I just showed you is out of this '79 book we got from Mr. Crowe. State Farm claims they don't have this, don't they?

A I don't know.

Q Mr. Crowe had it, and produced it. What will State Farm do with this, in your region, now that we've

Vol. R. 10276-192

found it in Mr. Crowe's documents? Will you destroy it, or will you keep it?

A We shouldn't have it. It's been replaced with two other revisions.

Q So you'll destroy it.

A It should have been destroyed a long time ago. We don't have it, would be my assumption. When you get a new book, there's been two revisions of it, the most current one should be the revision we got in the early nineties.

Q Now, yesterday you testified that the PP&R program, if my notes are correct, was just for the development of individual employees. Do you remember

saying that?

A That's one of the purposes of the PP&R.

Q And I'm looking at the '79 booklet. It says the purpose, "To translate and actuate corporate, regional, department, and function annual plans into individual action plans for all levels of employees."

The purpose of the PP&R was to have the corporate objectives translate right down to the individual in the company, wasn't it?

A That language was intended to make sure that, as individuals, whether they're superintendents or claims people, or underwriters, were not setting goals

Vol. R. 10276-193

and objectives that were contrary to the overall corporate and regional goals. That there needed to be a dovetailing, if you will, of those activities. So we wouldn't have a claim representative saying, "We want to do more paper work," at a time when we're trying to computerize the systems.

Q All right, now, you have acknowledged that reducing average pay per claim, or claim severity as an objective, is inappropriate.

A Under today's program, we have said that that should not be done.

* * *

Vol. R. 10276-195

* * *

Q Now, you mentioned the BI Proficiency Program in your testimony.

A Yes, I did.

Q That's something State Farm is pushing heavily right now, isn't it?

A It's a fairly current program. My memory is

Vol. R. 10276-196

it's a couple of years old.

Q I've seen a lot of PP&Rs where people commit to go full bore on that. Right in the BI Proficiency Program materials, we see number 2, which is "Reduction of average paid costs by $578 per claim." That's a major purpose for the BI Proficiency Program, isn't it, to reduce average pay per claim?

A It's to be aware, and to manage our cost.

Q And you're still using that program, right?

A The BI Proficiency Program is being utilized, yes.

* * *

Vol. R. 10276-200

* * *

Are you familiar with a person by the name of Brad Partington?

A Yes, I am.

Q Who is Brad Partington?

Vol. R. 10276-201

A He was a divisional claims superintendent who used to work in Utah.

* * *

Q (BY MR. CHRISTENSEN) I'll represent to you this is Mr. Partington's PP&R. Do you see it's dated the end of '95?

A It appears to be '95. I can't be sure.

Q It's dated — Oh, excuse me, let me go back, here. It's for the period from December, '95 to December, '96, right?

A That's what it appears to be from here, yes.

Q Do you see number 2 there at the top of page 1273?

A If you could read it for me, it would help. I can make out most of the words.

Q What I particularly want to point out to you is item A, "indemnity payout."

A I need to understand the other that you've —

Q Do you want me to read that?

A I can't see all of it. Thank you.

Q "Through my leadership role in the diagnostic phase, I will facilitate identification of strategies

Vol. R. 10276-202

for improvement in the quality of claims service and operations. Our success will be measured by achieving quantifiable positive trends in claims performance measures such as, A, indemnity payout."

That's average pay per claim, isn't it?

A Allocated adjustment expense and customer services, and employee morale.

Q It's still going on, isn't it?

A He's talking about a program to take a look at our operation, and find ways that we can deliver our products and services in a more quality fashion, called "Advancing Claims Excellence."

* * *

Vol. R. 10276-208

* * *

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom. Do we have anything we need to put on the record this afternoon?

Vol. R. 10276-209

MR. BELNAP: Just, if I could indicate at the bench conference I objected to the cases being referred to that were done, or gone into, excuse me, in cross examination. We've talked about that before generally.

Specifically, in regard to this witness, I don't think that we opened the door on cases from other jurisdictions. And further, I don't believe that fire company cases, of which those all were, except the Lloyds case, which is like a fire company, or homeowner's case, are appropriate, Your Honor.

THE COURT: Mr. Christensen, do you or Mr. Humpherys want to respond?

MR. CHRISTENSEN: Yes, let me respond very briefly. The court's ruling before the trial was that these cases — and we did disclose these, whenever it was — could be used for impeachment and rebuttal. The specific language of the order indicated that they would not be subject to the same limitations as our case in chief.

Also, this particular witness was designated as a 30-B-6 witness to testify as to an awareness of punitive damage claims. He then, in his deposition, as he did here, said he didn't know of any. And so we felt that it was fair to use the cases.

I didn't use all fourteen, I used published

Vol. R. 10276-210

appellate decisions to challenge that. And furthermore, I think State Farm crossed the auto-fire line a long time ago in this case, including with this witness. And this witness was over both fire, auto, and said he was over Lloyds, too, in Texas.

THE COURT: I think Mr. Humpherys added another point, and that is that there was some testimony about his awareness of these kinds of cases, and this went to

impeaching that particular testimony.

MR. HUMPHERYS: Yeah, let me set forth that quickly, for the record.

In the direct examination by Mr. Belnap, he was being asked that in his responsibilities and duties, whether he was given suit reports, which he said he did, he then said that these were very, he was very sensitive to these kinds of cases, very aware. He responded to them, he tried to react.

And then testimony was elicited to the effect that these kinds of cases are the kinds of cases that he takes action as a result, and responds. And then he proceeded to say, such as in this case, the Campbell case, we have taken action now to, from this point forward, to send out "peace of mind letters."

And so it went to impeaching him on the fact that he has not and does not do this, and that this was

a self-serving testimony for this case.

THE COURT: Well, my holding was based on the arguments that counsel for the plaintiffs made.

I think I should make a note, as Mr. Christensen said, there has been a somewhat different standard applied in this case, and I think it's going to apply clearly on both sides, that when it comes to impeachment — and I think the record's clear on impeachment efforts with Mr. Crowe, of Ms. DeLong, and of Mr. Slusher — clearly State Farm has made reference to fire cases.

I remember going on record very specifically to advise Mr. Garrett, and having been about as pointed as I could, which is a role I normally don't play, it just seemed to me that he was perhaps unmindful of that issue. He probed without any discrimination to impeach Mr. Slusher on fire cases.

So it seems to me that, at least with respect to the areas of impeachment, that the line that the court drew between auto and fire has been eliminated. Though I do think that the line is an appropriate one when it comes to substantive evidence, and will continue to be mindful of the distinction in that respect.

MR. HUMPHERYS: Your Honor, could I clarify for

the record? I think there may be some names mixed

up. I think it was Mr. Prater that was testifying, and it was Jim Chandler.

MR. CHRISTENSEN: Crandall.

THE COURT: Did I say —

MR. HUMPHERYS: You're absolutely right. It was Prater and Crandall.

THE COURT: Who was it I said, Garrett? I don't know where that came from. But you're right, it was Mr. Crandall, and the witness was Mr. Prater. I appreciate the correction.

* * *

Vol. R. 10277-4
SALT LAKE CITY, UTAH; JULY 11, 1996; A.M. SESSION

* * *

ELTON "BUCK" MOSKALSKI the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10277-29

* * *

Q Now, you testified that the Campbell case has your full attention.

A It certainly does.

Q But when I started to question you, you said you hadn't even read the file.

A At the time my deposition was taken, I had not read the claim file, that's correct. Since that time I've reviewed volumes of documents.

Vol. R. 10277-30

Q That was just a few weeks ago.

A That was on April 26th.

Q Do you know how old this case is?

A Yes, I do.

Q Your sudden interest in this case doesn't have anything to do with this trial, does it?

A Obviously when you're subpoenaed as a witness to appear and tell the truth, obviously it's going to get my attention. As it would anybody sitting here.

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Vol. R. 10277-36

* * *

REDIRECT EXAMINATION BY MR. BELNAP:

* * *

Vol. R. 10277-47

* * *

Q I want to move to another item, Mr. Moskalski, and that is yesterday you indicated to this jury that, as far as this region and you are concerned, from your review of this file, that you can state that there have

been some lessons learned by State Farm, and one of those lessons you indicated to Mr. Christensen will take place from this point, forward, and you referred to that as being a letter that you will supply to an insured. Do you recall that testimony?

A That's right. I referred to it as a peace of

Vol. R. 10277-48

mind letter.

Q Now, you indicated that in a situation where an insured may have purchased a policy limit of a certain amount, whatever that is, and if they get sued, they are entitled under the policy, and you're required to provide them a defense, and to pay; is that correct?

A That's correct.

Q And if State Farm makes the decision on this particular case that it's not appropriate to pay, because there's no liability, or there's not a valid claim, or whatever the reason for that is, and you're going to take the case to trial, can you tell the jury if there's been an offer to settle this case, we're talking —

A An offer within the policy limits?

Q Within the policy limits, can you tell this jury, if you've made a decision to go to trial, what it is from this point that State Farm is going to tell the person that we're talking about, here, that's an insured that will be involved in this trial? Can you tell us what State Farm is going to tell them?

A Basically what we're going to say is that, "We think this is a case that needs to be tried. We've had a demand within your policy limits, and we know that you might be concerned about that. We're telling you

Vol. R. 10277-49

that we're going to trial, and in doing so, we recognize the risk involved. We're willing to accept the consequences. And if this comes in greater than your policy limits, we're going to step forward, file a full supersedeas bond if the case has to be appealed, or we'll pay it in full, so that you have no responsibility."

And what that really means in this case, is that the Curtis Campbell case will never occur again.

Q You now, Mr. Moskalski, you are saying that today, in court — And let me represent to you, and I think counsel would stipulate to this, in a court proceeding, we receive from Ms. Wilson a transcript of this case each day. And what you have just said is a commitment, in writing, on the part of State Farm. Is that how you understand it, sir?

A I understand that I'm committed in that. But beyond that, I am personally committed, which I think, to me, has greater weight. It's a commitment I've personally made, a promise that I've personally made as the regional vice president of this region.

Q And given the fact, Mr. Moskalski, of the practice of this company, in the cases that have been involved in this region since you came here in 1989 that have been paid and resolved that resulted in an excess,

Vol. R. 10277-50

can you tell this jury why State Farm, through your decision, is willing to do this for its insureds in the future, in addition to what's been done in the past?

A This is a stepping forward. It's a recognition, as we've talked on several occasions, about things evolving in the business world, things evolving in the insurance world. This is a recognition of that evolvement, it's a recognition of some of the concerns that policy holders may have, and it's our attempt to respond to those concerns in a responsible sort of way.

Q Is this a commitment that you are making for this region, Mr. Moskalski?

A The three states that I have the responsibility for, are the regions I can make that decision in, and I have made it independently.

* * *

Vol. R. 10277-67

RECROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10277-70

* * *

Q (BY MR. CHRISTENSEN) Mr. Moskalski, this is a PP&R on Bob Noxon, who was the divisional claim superintendent in Utah.

MR. BELNAP: What year is that?

MR. CHRISTENSEN: It's December, '82 to December, '83. This is one that apparently was just recently located.

Q (BY MR. CHRISTENSEN) Mr. Noxon's PP&R has — I'm looking at control number 21200 — it says, "See chart for specific cost goals." Do you see that?

A Yes, I do.

Q And then we turn to the specific cost goals, and you see some average paid A. I don't know what that means. Is that a kind of coverage?

A That's liability coverage.

Q So that's average paid BI?

A Yes.

* * *

Vol. R. 10277-72

Q You mentioned a peace of mind letter that henceforth is going out?

A That's correct.

* * *

Q (BY MR. CHRISTENSEN) Where's the written policy? Who's it been sent to that says that?

A I never said there was a written policy. I

Vol. R. 10277-73

told this jury that I had made that decision, as the regional vice president of Mountain States. That policy has been utilized in three cases already. We haven't sent the letter, but we have gotten in touch with the policy holder and assured them up front, just as we would in a letter.

Q That's going to be for the whole State Farm organization?

A No, I said it was for the Mountain States Region. I made that decision for those three states as its chief executive officer.

* * *

Vol. R. 10277-84

STEVEN B. NEBEKER called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Vol. R. 10277-85

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q And Mr. Nebeker, are you a lawyer?

A I am.

* * *

Q Mr. Nebeker, I'd like to briefly talk to you about your background and your experience. How long have you been an attorney?

A I've been an attorney for about forty-two years. I practiced law for about forty of those years, because I had two years in the army after I graduated from law school.

Q And are you a trial attorney, and have you been, through substantially all of those years?

A Yes.

* * *

Vol. R. 10277-86

* * *

Q And have you been hired in this case by our law firm to render opinions and talk to this jury as an expert?

A Yes, I have.

Vol. R. 10277-136

* * *

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10277-172

* * *

Q Another factor that increased the risk in the case was, it was clear Slusher was going to win.

A Yes.

Q And Slusher had serious injuries, he was going to get a sizable verdict, wasn't he?

A He was. I think the medical specials were under $20,000. I think, in Mr. Humpherys' letter, he pointed out that Mr. Slusher, I think, was going back to college,

that he injured his left arm, and that he was right handed, which probably, to some extent, would —

Q That was Mr. —

A That was Mr. Humpherys' letter to his company.

Q Okay. But the injuries were serious.

A They were serious.

Q And we've read two different lists to this jury of those injuries, and I won't read them again.

We also had a tragic death, didn't we?

A We had a death, yes.

Q Very outstanding young man?

A My review of the testimony of him was he was

Vol. R. 10277-173

a fine young man.

* * *

Q And jurors aren't given, in death cases, they're not given amounts to, by the court, or guidelines, or books to look at. They just use their judgment and decide what's fair, don't they?

A Yes, and I think I've testified before, I wasn't sure if the judge had instructed the jury about parameters on this case or not. But I think now, typically the judges do not do that. They simply give instructions dealing with how the jury is to calculate damages, and the jury does it.

Q And that also would be true with Mr. Slusher's claims, that ultimately the amount is up to the jury.

A That's correct.

Vol. R. 10277-174

Q And they don't have the benefit of years of experience and knowing what other juries may have done or what settlements have been, they just have to do their best and pick a figure.

A That's correct.

Q And a jury, if it so chose, would have awarded a million dollars for Mr. Ospital's death. It's not likely, but it could have happened.

A It could have happened. Not likely, as you say.

* * *

Vol. R. 10277-201

* * *

WILLIAM S. BROWN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q And who are you employed by, Mr. Brown?

Vol. R. 10277-202

A State Farm Mutual Automobile Company.

Q Okay. And how long have you worked for them?

A A little over thirty-one years.

* * *

Vol. R. 10277-203

* * *

Q And have you worked as a claim representative, where you're the person actually handling the claims?

A Yes, I spent five years in Tulsa, Oklahoma as a bodily injury claim representative.

Q And have you also worked as a, in any other jobs besides a claim superintendent's job and a claim representative?

A Yes, I was a divisional claim superintendent in Utah and in Colorado from, I guess 1979 until 1990.

Q And were you a divisional claims superintendent when the Campbell accident happened in May of '81, and a lawsuit occurred and a trial resulted?

A Yes, I was.

* * *

Vol. R. 10278-4

SALT LAKE CITY, UTAH; JULY 12, 1996; A.M. SESSION

* * *

WILLIAM S. BROWN the witness on the stand at the time adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Vol. R. 10278-84

* * *

Q I want to go to another area, Mr. Brown. There's been some discussion in this case about average paid costs, about reducing indemnity expenses on PP&Rs. We have supplied the plaintiffs in this case with your PP&Rs, your personal PP&Rs back into the early eighties, and up through into the nineties. Do your PP&Rs have mention in them about attempting to control indemnity expense, along with other costs and expense?

A Yes, they do.

Q Why?

A Well, in the — It's kind of hard to explain. When you're looking at your operation that I was in charge of the Utah automobile insurance operation for claims, you have to try to figure out what's

Vol. R. 10278-85

happening in that operation. And so to look at your average paid cost, you're trying to forecast what's going to happen the next year, and a lot of times you take the information that you had in the prior years to forecast what's going to happen next year. And it's really just an awareness thing, so you can try to understand what's happening within your operation.

Q Mr. Brown, did there come a point in time when instructions were received for claims management — Is that what you've been?

A Yes.

Q Is claims management? That those goals should not, no longer be used. Do you recall that?

A Yes, I believe that was in 1994, I believe.

* * *

Vol. R. 10278-86

* * *

Q Mr. Brown, I realize that — I'm not trying to be silly about this — that we acknowledge everybody in this room's a human, obviously. Do you claim that you've never made a mistake in your life in handling claims?

A No, certainly not.

Q How have you been trained, Mr. Brown, in terms of how you should handle claims at State Farm? In terms of the philosophy?

A Well, I started a little over thirty-one

Vol. R. 10278-87

years ago, and when I first started with this company, the philosophy is the same as it is right now. And that's to handle each claim on its own merits, pay what you owe, and as soon as reasonably possible, and protect the insured by getting a release on the claim.

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Vol. R. 10278-93

* * *

CROSS EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10278-161

* * *

Q Now, when you made this decision in September of 1981, isn't it true that you had not reviewed the

Vol. R. 10278-162

claim file?

A Me, personally, are you talking about?

Q Yes.

A I can't remember if the claim file was present. It probably was present when the claim committee was held, but I would not have personally gone through the claim file at that time, no.

Q And you didn't read any of the adverse witnesses' statements, did you?

A I don't believe there were any adverse witness statements at that, in existence at that time.

Q You didn't read the police statement, either, did you?

A The what?

Q The police statement.

A I don't remember if I read the police statement, but —

Q Do you remember testifying two years ago that you didn't read it? Do you want to look at your testimony?

A I just said I don't recall if I did or not.

Q Well, you said you didn't read it before, now you're saying you don't recall.

A Okay, if you see a difference there, that's fine.

Vol. R. 10278-163

Q You didn't read in the police report where there was three or four adverse witnesses that put the fault on Mr. Campbell? You didn't read that, did you?

A No.

* * *

Vol. R. 10278-164

* * *

Q All right. Now, isn't it true that you testified two years ago that the claim committee only had the CLR available when it made its decision?

A I don't recall that, no.

* * *

Q Okay, then I'll just have you look over my shoulder, it's page 214. Starting on line 6, "And all you had was a claim committee report upon which you based your decision of no liability; is that correct?"

* * *

THE WITNESS: Then I said "That is all that was within the claim committee." The file would have been there with superintendent Noxon as he went through the presentation of what happened in the accident.

Q (BY MR. HUMPHERYS) Okay, let's read a little lower. "Did you read any of the witness statements?"

A "No."

Q "Did you review the investigating officer's report?"

A "We would not have done that at that point,

Vol. R. 10278-165

no."

Q "Did you review the transcript of the investigating officer, the recorded statement?"

A The answer is, "No."

* * *

Vol. R. 10278-240

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THE COURT: Let the record show the jury's left the courtroom. You can step down, Mr. Brown. Please, have a seat.

* * *

Vol. R. 10278-251

MR. BELNAP: And the second thing is, Your Honor, we, since Ms. DeLong testified and brought up in her testimony the allegation of a $175 million scheme on the part of State Farm as to the earthquake, the Loma Prieta earthquake loss that State Farm shenaniganed $175 million from policy holders in that, we have been looking for and have located a Mr. Hernandez, who was with the California Insurance Department; is that correct, Stuart?

MR. SCHULTZ: He was the deputy commissioner.

MR. BELNAP: He was the deputy commissioner who received all of that documentation from Ms. DeLong, and reviewed it and investigated it, and found no cause to proceed with the claims that she has told this jury about. And we would like to notify the court that we would like to call him as a rebuttal witness to Ms. DeLong.

MR. CHRISTENSEN: Your Honor, we didn't get into that in our presentation of Ms. DeLong because the court had indicated we should stay out of earthquake. It was brought up through Mr. Crandall's cross, and so I was allowed briefly to cover it.

We were handed today, from Mr. Ovard, right after the lunch break, some new information they want to present through him.

Vol. R. 10278-252

We still feel like we're getting trial by ambush in this case. And this would make the sixth insurance regulator they want to inject into this case. I don't think it's proper that they've got five. It's repetitious. We presented Mr. Prater and were required to present that as part of our case in chief, rather than bring him back on rebuttal, with the understanding that the insurance regulator stuff would stick to the depositions and the evidence that was there.

And if they bring him, we're going to have to go out and marshal evidence on the California earthquakes. I understand there's some San Francisco fires that State Farm pulled some shenanigans in. This case isn't going to end. And boy, if they can't cover this stuff with five insurance regulators, it's — We're confronted with new evidence daily in this case. It's not fair, it's not manageable.

MR. HUMPHERYS: Let me just follow up on one point, too. One of the concerns we've had is that Ina DeLong has talked about this, testified about it two years ago. It has been well known for two years. State Farm is well aware of this evidence that she has, because she has testified against State Farm in a number of cases regarding this earthquake stuff. State Farm moved to exclude all of that and the court granted it.

Vol. R. 10278-253

Mr. Crandall, despite State Farm's own request and restriction in evidence, opened that door. And now for them, after all of that, to place that kind of burden on the court, on the parties, and on counsel, to totally create now an entirely new issue in this case, is absolutely wrong.

When, if they were going to go into the earthquake stuff, they shouldn't have moved to exclude it. And they should have disclosed this regulator in advance, we could have had the normal discovery, and dealt with it in pretrial motions and discovery, and had it done. Instead, they've chosen to do the opposite, and it's just highly prejudicial to us.

MR. SCHULTZ: Can I say something about that?

MR. BELNAP: Just one thing.

THE COURT: One more response, and let's —

MR. SCHULTZ: I'll convey it.

THE COURT: That works for me.

MR. CHRISTENSEN: Let me just add something. I think Mr. Crandall, in cross on Prater, covered the point they want to make, too. He said that the California Insurance Commission hadn't done anything, that Ina DeLong had gone to them and they hadn't done anything. It sounds like the point they're trying to make.

Vol. R. 10278-254

MR. BELNAP: Your Honor, it was clear to me that the only foundation Ina DeLong had for any of her opinions were fire cases. When you got right down to it, that was her foundation. And her testimony on it was stricken. And if it's not stricken, when you talk about opening doors, he asked her, "Isn't the reason you left State Farm because of your relationship with contractor," blah, blah, blah. And that door wasn't opened, Your Honor, in our view, by doing that. She opened it, counsel brought in a stack of documents and waved them and slapped them down right in front of the witness.

THE COURT: Okay, let's do it this way. I'm not at all interested in bringing any more witnesses in here. I'd like to see a few less of them. I tried to communicate to Mr. Crandall that going into earthquake and fire was a problem. To me, all of that has anything to do with this case is virtually, is impeachment, unless there's some linkage, and the linkage has been tenuous.

It seems to me maybe what we ought to do is have some kind of an instruction to the jury which would, in effect, serve the purpose of taking out of any consideration substantively anything that has to do with anything but auto cases. And I just don't see that we

Vol. R. 10278-255

need for them to concern — Or policies that were common to the auto company and the fire company.

The fire cases have not done a lot to advance this case, we had plenty of information on the auto cases, and I'd be more inclined to just deal with it as a matter of instruction. And I think what you ought to do is formulate some instructions to the jury that attempt to tailor what evidence they ought to be considering in support of the claims, as opposed to what evidence was before the jury that deals with the credibility of the witnesses and other matters which are unrelated to the issues that we have defined as being the issues to be tried, and let's just do it that way.

* * *

Vol. R. 10279-4

SALT LAKE CITY, UTAH; JULY 16, 1996; A.M. SESSION

* * *

RICHARD ROGERS called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HANNI:

* * *

Q What is your occupation? What do you do for

Vol. R. 10279-5

a living?

A I'm the deputy director of the Illinois Department of Insurance.

Q Mr. Rogers, will you tell us, how long have you been deputy director?

A I've been deputy director for twenty years.

* * *

Vol. R. 10279-15

* * *

Q Is State Farm Auto Company, State Farm Mutual

Vol. R. 10279-16

Automobile Company, is that organized under the laws of Illinois?

A That's an Illinois domestic company, yes.

Q And is that true also of State Farm Fire?

A Yes, sir.

* * *

Vol. R. 10279-50

* * *

Q Mr. Rogers, based on your experience as a regulator, based on your education, your association with the other regulators in the National Association of Insurance Commissioners, your discussions with attorney generals, with your discussions with what you call neighborhood groups, other consumer groups, can you tell us whether or not, based on all that experience and your knowledge, there exists a pattern and practice on the part of State Farm Auto, or State Farm Fire, of cheating insureds and claimants?

Vol. R. 10279-51

A I have never seen any study, never heard any general inquiry that would lead me to draw any such conclusion.

Q Now, if such a pattern and practice existed out there on the part of an insurance company, and in particular State Farm Auto or State Farm Fire, is this something that you would expect to know about?

A It would seem to me that, with all of the tools that we have, with all the contacts we have, if there was a conspiracy to cheat, that at some point in time, somehow or another it would come to my attention, yes, sir.

Q Now, let's leave conspiracy out of it. If there were a pattern and practice on the part of just one company, would you expect to know about it?

A Yes, I would.

* * *

Vol. R. 10279-56

Q And do you, as you sit here today before this court and this jury, feel that you regulators would know if there was a pervasive pattern and practice of an insurance company out there to cheat insureds and claimants?

A If there was a general practice such as the one that you're describing, and on the scale that you're describing, I would find it almost impossible to believe that at some point in time that I wouldn't be made aware of it.

* * *

Vol. R. 10279-61

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10279-65

* * *

Q Now, in your deposition you claimed that you routinely look at court cases involving insurance companies. Do you recall that?

A I recall saying the department routinely looks at court cases.

* * *

Vol. R. 10279-66

* * *

Q I asked you if you knew of any punitive damage verdicts against State Farm, you said you didn't.

A I believe that's correct.

Vol. R. 10279-67

Q Is that still true?

A Yes.

Q Has State Farm informed you that we've provided them with a list, a large number of court cases around the country, where State Farm has been guilty of, or been found guilty by different courts, of misconduct, including bad faith or punitive damages? Do you know about anything like that?

A No, sir.

* * *

Vol. R. 10279-70

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Q And I asked you if you knew of any class action lawsuits against State Farm, and you said you only knew of one, and that was one about fifteen years earlier in California. Do you recall that testimony?

A Generally speaking I recall the questions, yes.

Q Now, have you learned since your deposition that there's quite a few class action lawsuits against State Farm around the country?

A I have not done any preparation for this, no, sir.

Q You don't know of any class actions against State Farm, other than the one you mentioned, that fifteen-year-old one in California?

Vol. R. 10279-71

A I don't — I know of the after-market parts litigation that we're talking about.

Q The one in California.

A I believe that's correct.

Q That was an old one that you referred, you thought it was about fifteen years old?

A Generally speaking I think that's probably about right.

Q Okay. Well, I want to get into that with you in a minute. Now, you said that you were chairman of an NAIC — and that's this National Association of Insurance

Commissioners — you were chairman of an NAIC committee to write a regulation for the use of salvage yard parts and after-market parts.

A That's correct.

Q So you were tuned in to that issue.

A Yes, sir.

Q But when I took your deposition a few weeks ago, you never mentioned that there had been a class action on that very subject in Illinois, right in your state, did you?

A No, sir.

Q You didn't know about it.

A No, sir.

Q Do you take any newspapers in Illinois?

Vol. R. 10279-72

A Yes, sir.

Q Do you take the Chicago Tribune?

A Yes, sir.

Q Is that the largest paper in Illinois?

A I would presume that it is, yes.

* * *

Vol. R. 10279-78

Q All right, let me move on. Here's another Chicago Tribune story from 1991, it says, "Suit says," and the headline on it was, "Suit says State Farm defrauds customers."

If someone's claiming that State Farm or another insurance company in your state defrauds somebody, isn't that something you ought to be looking into?

A Yes.

Q This goes on to say, "A Chicago woman filed a class action lawsuit against State Farm Mutual Automobile Company charging the giant insurer's method of paying claims under uninsured motorist policies defrauds customers." Were you aware of this one?

A No, sir.

Q Is fraud something that you're supposed to be looking for?

A Yes.

Q You didn't do anything about that one?

A I wasn't aware of that one, sir.

Q Okay. Here's the Chicago Tribune from '92, headline, "State Farm will pay 70 percent of rejected claims. State Farm Insurance automobile policy holders who have had their medical claims rejected in the last thirteen years are due refunds under the terms of a

Vol. R. 10279-79

settlement reached in a class action lawsuit Tuesday."

And it goes on to provide that, "The company will be paying between five and $10 million, and that there were more than 5,000 policy holders who filed suit in 1989."

Were you aware of this class action?

A No, sir.

Q Do you know if it had anything to do with the other article I just put up?

A No, sir.

Q It looks like a similar subject, doesn't it?

A I don't know, sir.

Q If 5,000 policy holders, over a thirteen-year period who have had their medical claims improperly denied, is that a minor deal that's not worth your attention?

A No, sir.

Q You didn't know about this?

A No, sir.

* * *

Vol. R. 10279-81

* * *

Q Now, earlier this morning you testified that it was inconceivable to you that State Farm could be mistreating any significant number of people and you wouldn't know about it. I don't claim that's your exact testimony, but that's basically what you said, isn't it?

A I believe that's true.

Q And you said that because you go to different meetings, and you interact with people from every state in the union, and you talk.

Vol. R. 10279-82

A Yes.

Q Well, let me see if you've heard about any of these others. . . .

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Vol. R. 10279-91

* * *

Q I don't want to waste a lot of your time or the court's or the jury's, I've gotten these two books, approximately 100 judicial findings in different cases around the country of misconduct by State Farm. We'd be wasting our time for me to go through and ask you about these, wouldn't we?

A If they're similar to the last cases, I presume that's correct.

* * *

Vol. R. 10279-96

claims?

* * *

Q I don't want to quibble with words. Let's move on. "Have you ever reviewed any of State Farm's claims manuals?"

Your answer was, "I don't recall."

"Have you seen any?"

Your answer was, "I don't recall."

Question. "If I were to ask you questions about what are State Farm's claims practices and policies, I assume you wouldn't be able to tell me something like that, would you?"

Answer. "I don't recall. I don't know whether or not I would be able to."

Question. "Have you ever heard of State Farm's PP&R program?"

Answer. "I don't know."

Question. "And nothing that you recall right now, apparently?"

Answer. "No."

* * *

Vol. R. 10279-113

* * *

Q I'm going to show you a document out of State Farm's PP&R manual, which I presume you've not seen.

MR. HANNI: Which manual?

MR. CHRISTENSEN: This is out of the '79.

Q (BY MR. CHRISTENSEN) Have you ever seen anything that looks like this at State Farm before?

A This was from '79?

Q Yes, this is from '79. I'll show it to you. Here's a photocopy of it.

Vol. R. 10279-114

A I can assure you if I did, I don't recall.

Q This isn't the sort of thing you'd normally look at, is it?

A No, it isn't.

Q You would agree, would you not, that State Farm's booklet suggesting goals to claims people, like the one I'm pointing to right now, to hold BI paid cost to a certain number or less for the year, you'd agree that's very inappropriate, wouldn't you?

A Again, taken out of context, I would agree that it certainly appears to be inappropriate. And I have no idea, sitting here, what context it's in. That line in itself, in and of itself, appears to be inappropriate, yes.

Q But you and the people at the department in Illinois didn't know this was going on at State Farm, did you?

A Was I aware of this PP&R manual?

Q Or that —

A No, sir.

Q You weren't aware that these kinds of goals were going on at State Farm, were you?

A I have no idea if that's a State Farm goal. Again, you're taking a line out of context, and I have no idea how that translates to anything.

* * *

Vol. R. 10279-116

* * *

Q Let me ask you about one more, and then we'll move on. How about settling a certain percentage of totals below book value, before you've even seen the cars? That's not an appropriate goal, is it?

* * *

Q My question is simply, do you see anything wrong with that as a suggested goal in a State Farm manual?

A In the context that I think that's in, I think that's inappropriate.

* * *

Vol. R. 10279-155

STEPHANIE STOUT called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Vol. R. 10279-156

DIRECT EXAMINATION BY MR. SCHULTZ:

* * *

Q Are you presently employed by State Farm Mutual Automobile Company?

A Yes, I am.

Q And where do you work?

A I work in the Academy Park office in the Lakewood area, which is a suburb of Denver.

Q And how long have you been employed by State Farm?

A It'll be eighteen years this month.

Q So you began in July of 1978?

A That's correct.

Q And what is your job for State Farm?

Vol. R. 10279-157

A I am an estimator, I inspect damage on automobiles.

* * *

Vol. R. 10279-173

* * *

Q Ms. Stout, Mr. Davis has testified here in court that he was taught, and that he did target certain groups of people when they came in for repairs or replacement, or things like that. And he has indicated, for example, that people who had gray hair, or no hair were targeted aggressively to try and pay them less than what they were due. People who might be on a fixed income status were targeted to treat them less than fairly, and that they were targeted to be low balled, in his words.

He has also talked about other people who had financially tight situations, such as young couples, recently married, single mothers, people who have first mortgages. Now, have you been taught to target those kind of people and to treat them, or pay them less than what they were due, Ms. Stout?

A Absolutely not.

Q Does that sound like the company that you work for?

A That is not the company I work for.

* * *

Vol. R. 10279-175

Q Are you surprised to hear that Mr. Davis is claiming that State Farm taught him and others on a regular basis to cheat and to defraud customers?

A No, we are not taught to cheat and defraud customers.

Q Are you surprised to hear that he's saying that?

A I'm very surprised to hear him say that.

* * *

Vol. R. 10279-177

* * *

Q Has your continued employment with State Farm, Ms. Stout, been dependent upon you paying less than what was owed on claims?

A No, my employment has not depended upon that. My employment has been that I can do the best job I possibly can for the customer, and for the insurance company, to restore that vehicle, and use all the knowledge that I possibly have available to me in order to be able to do that.

Q Have your raises been dependent upon paying less than what was owed?

A No.

Vol. R. 10279-183

* * *

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10279-190

Q Now, your deposition testimony was that State Farm doesn't emphasize average pay per claim; isn't that true?

A I don't believe that they do emphasize that. I think that we are made aware that we can write estimates as reasonably as possible.

Q Fred Hartwell was your boss?

A Yes, sir.

Q I have his PP&R from December of '90, so this

would be a PP&R, presumably for the year '91. See the underlined portion I'm referring to right here? Can you read that from where you are? "Strive to reduce average costs for unit 160 to maintain claim section B goals of —" And you were in claim section B?

A Yes.

Q "—of coverage B." What's coverage B?

A Coverage B is a third-party claim.

Q But it's collision?

A It's collision.

Q It's property damage where you're paying for a car that one of State Farm's insureds has damaged.

A True.

Q And coverage G, is that collision coverage on a State Farm policy holder's car?

A Yes, it is.

Vol. R. 10279-191

Q Do you see your boss having some specific goals on average pay per claim?

A I see that.

Q Does that shock you?

A No, that doesn't shock me.

Q This is the first time you've ever seen something like this?

A That's the first time I've seen my supervisor's progress report, there.

Q The only way he can meet those goals is if the people that work for him do it, right?

A I don't know if he can meet those goals. You can't control how much damage is out there on a daily basis.

Q Well, let's see how he did. See where it says, "Achieved units current through," and I think that's 9-91, I believe we established in his depo Sunday. No, it's '91, see the date on the document? Average paid costs. Coverage B was $1,154, so he has reduced average pay per claim for coverage B, hasn't he?

A Well, I think he got lucky enough to do that, maybe.

Q And he's done it by your help. And coverage G, he's reduced average pay per claim, hasn't he?

A It looks like he managed to do that.

Vol. R. 10279-192

* * *

Q Are you familiar with a William T. Beenck?

A Yes, sir.

Q Is he the divisional claim superintendent?

A He was. He's retired.

Q He was not only your boss, but he was Mr. Hartwell's boss?

A Yes, he was.

Q Here's his PP&R, it looks like for the year '91. Do you see some average pay per claim goals there for property damage settlements?

A Yes.

* * *

Vol. R. 10279-193

Q This is another one of Mr. Beenck's PP&Rs. This looks like for the year 1990. Do you see some average pay per claim goals, there?

A Yes, sir.

Q Your testimony is you have no idea this was going on?

A I'm not involved in management.

* * *

Vol. R. 10279-200

* * *

Q Now, Miss Stout, you testified that even though your name appears on those cost savings reports with your statistics compared to everybody else's, that there were never any contests at State Farm. Right?

A I have not been involved in any contests. I don't know what you're talking about when you say contests.

Q And you're not aware of anybody at State Farm ever having contests around things like appearance allowance.

A No, sir, I'm not aware of that.

Q You admit it would be wrong to do that, don't you?

Vol. R. 10279-201

A I think that would be wrong.

Q And it would provide an incentive to pay less on claims, or to do things that may be inappropriate.

A I do believe that would be wrong.

Q Now, the Utah office, or functions at State Farm, as long as you've been there, have always been under the same management as Colorado, haven't they? Same region?

A I believe so.

Q I'm going to show you a document that we got from Samantha Bird dated September 19th, '86. This is the time frame Bruce Davis was working at State Farm in Colorado.

A Okay.

Q Or at least close to it.

MR. SCHULTZ: I think it's two years after he worked there, counsel.

Q (BY MR. CHRISTENSEN) This talks about pride month in Utah. Did you have pride months in Colorado?

A I've heard that terminology.

Q It says, "October pride month we will have the following categories of competition." Does that surprise you?

A Not aware of it.

Q "Sandy and Murray will compete against each

Vol. R. 10279-202

other and Ogden and Orem will compete against each other." And there are a number of areas of competition. D is estimatics. That's your area, isn't it?

A Yes, sir.

Q "One winner will be selected from the Sandy/Murray competition, and one winner from the Ogden/Orem competition. Competition will be relating to cost savings in the following three categories. Appearance allowance, after market parts, and salvage parts."

Bruce Davis was telling the truth about competitions around these issues, wasn't he?

A No, sir.

Q This happened in Utah, but it never happened in Colorado.

A Never happened in Colorado.

* * *

Vol. R. 10279-210

* * *

LELAND F. NORMAN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

* * *

Q Mr. Norman, where do you live right now?

Vol. R. 10279-211

A Franktown, Colorado.

Q And how long have you been a resident over there in Colorado?

A I've been a resident there since 1970 in Colorado.

Q Are you presently employed by State Farm Mutual Automobile Company?

A Yes, I am.

Q How long have you been employed with State Farm?

A It'll be twenty-six years this month.

* * *

Vol. R. 10279-228

* * *

Q One of the other things that Mr. Davis has talked about in general is that he was taught and instructed, and it was basically drummed into him, that if, that he was supposed to look at the people as they came in to settle their claims, and from looking at them, he was to decide whether or not he could take advantage of them based on what their socioeconomic status was, rich, poor, single, widowed, retired, things like that. Is that the kind of instruction that you were giving to him in Pueblo?

A No. No, there has never been any type of instruction to take advantage of anyone. Number one,

Vol. R. 10279-229

you can't tell what somebody is when they walk in the door.

Q He also talked about an older couple that might come in with their motor home, and if they had a trout decal or something like that on it, that was a tipoff that that person wouldn't want to get a repair, and he could

essentially treat them unfairly, and not pay what they were due. Is that something that was instructed?

A No. No, I've never — That was the first time I'd ever heard of that, when I first heard of that testimony.

Q Have you, during your twenty-six years with State Farm, been taught to take advantage, or cheat claimants or policy holders because of their station in life?

A No.

Q Have you ever done that yourself?

A Not that I'm aware of.

* * *

Vol. R. 10279-233

* * *

Q Has your ability to maintain your job, or to get a raise, been dependent upon you paying less than what was fairly owed on claims?

A No.

* * *

Vol. R. 10279-239

* * *

Q Have you ever knowingly or intentionally tried to cheat a claimant or a policy holder out of what they were owed?

A No, sir. If anything, I'd give the customer the benefit of the doubt and pay them more if I need to.

Vol. R. 10280-4

SALT LAKE CITY, UTAH; JULY 17, 1996; A.M. SESSION

* * *

LELAND F. NORMAN the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Mr. Norman, you're still employed at State Farm?

A Yes, sir.

Q You've been there for twenty-six years?

A Yes, sir.

Q And it's your sworn testimony — By the way,

Vol. R. 10280-5

I took your deposition Sunday, as well; isn't that true?

A Yes, that's true.

Q Was your sworn testimony that in twenty-six years you've never treated anyone unfairly; isn't that true?

A Not that I'm aware of. I always try to be fair with a customer.

Q And in your deposition you didn't even qualify it. You just said you hadn't done it, right?

A I may have made that statement, but you know, I'm human.

Q In twenty-six years you've never tried to take advantage of anyone to pay less than fair value.

A No, I haven't.

Q You've never seen anybody do it?

A Not that I'm aware of.

Q You've never even heard of it at State Farm?

A That's not a practice that we would be involved in.

Q And you've never actually paid less than full, fair value.

A Not that I'm aware of.

Q You're not aware of anyone else doing it?

A No, I'm not, sir.

* * *

Vol. R. 10280-10

* * *

Q We don't have your PP&Rs from the time frame that Bruce Davis worked at State Farm, do we?

A No.

Q In fact, we've only got yours for periods in

Vol. R. 10280-11

the nineties; isn't that true?

A I believe so.

* * *

Q Well then let's look at Mr. Peterson's. Like I say, he was your boss. He'd have had some influence on you, wouldn't he?

A Indirectly. He was a superintendent. My boss was a supervisor below him.

Q So he was your boss' boss?

A Correct.

Q Look at his goals. "Keep careful watch of total loss settlements. Strive to reduce at or above book settlements by 10 percent. Report my findings at unit meetings." Are those meetings you'd go to?

Vol. R. 10280-12

A No, management would go to the unit meetings, and then we may have a unit meeting after that.

Q "So the personnel —" Doesn't "the personnel" sound like the people under this man?

A I would assume.

Q Including you?

A Correct.

Q "— are aware of their production, and submit monthly report to divisional claim superintendent."

Now, let's look at how he did. On this side, his boss writes down how he did; isn't that true?

A I assume that's what that is.

Q Look down here. "As of October, 1981, settlements below book." Isn't that what that says?

A That's what that says.

Q Unit 160, that was the unit Bruce Davis was in, wasn't it?

A I'm not sure what unit he was in at that time. That could have been.

Q Look at this. 72.7 percent of total settlements settled below book value. Isn't that what that says?

A It doesn't say how it was arrived at, though, sir.

Q No, and we're going to talk about that.

Vol. R. 10280-13

A Okay.

Q We're going to talk about the methods you used to achieve this. The year before, in August of 1980, 66 percent of people whose cars were totalled were getting below book value. And that wasn't enough, was it? State Farm wanted more; isn't that the way that document reads?

A Not necessarily. That's just a statistical average, is what it's shown there. It doesn't say they wanted more or less.

Q Doesn't that say, "Strive to reduce at or above book settlements by 10 percent"? Doesn't that mean

they want him to pay less?

A It says, "Strive to reduce." It doesn't mandate that you reduce it by 10 percent.

Q He did it, though, didn't he? In fact, he did better than that. He took it from 66 percent to 73 percent.

A There, again, the factors of how that was arrived at is not shown there.

Q Now, I'll give you an opportunity — You want to change your sworn testimony that State Farm never encouraged the payment of less than book value?

A I have never been encouraged to pay less than book value.

* * *

Vol. R. 10280-25

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Q (BY MR. CHRISTENSEN) All right, I'm going to show you a page from Mr. Peterson's PP&R. Again, his and Mr. Davis' are the only ones we have from this time frame. See the part I've underlined, "Re-emphasize comparative negligence settlements. Strive for a 5 percent increase in the use of comparative settlements, compromises, and denials, in 1982."

You would completely agree, would you not, that is a terribly inappropriate goal.

A I would not agree that that's an inappropriate goal.

Q Didn't we just read your deposition testimony from just three days ago, where I asked you if you're aware of goals around contributory or comparative? And you said no, and I said, "Would you agree that would be wrong?" And you said yes.

A I don't recall of any goals on my PP&R. I've never seen that PP&R, sir. But I would not consider that appropriate, because if the adjuster is not doing his job, is not properly investigating, is not properly evaluating the claim, he may need guidance in order to do more thorough investigations, and properly settle the claim.

Vol. R. 10280-26

* * *

Q This is Mr. Peterson's PP&R.

A Okay.

Q To accomplish this goal he's got to get you to do it.

A And if his unit is not properly investigating claims, and are being lazy about their job, it would be a proper goal to encourage them to do proper investigations and evaluate the claims accordingly.

Q Do they give crystal balls to people at State Farm so they can foresee the coming year?

A No.

Q Mr. Peterson was able to foresee that, on the accidents that hadn't even happened for the coming year there would be 5 percent more people comparatively negligent. Isn't that what this says?

A I don't believe that's what that goal says.

Vol. R. 10280-28

* * *

Q I'm going to show you another one of your PP&Rs from 1990. Do you see where it says, "All total loss settlements in excess of current NADA must have prior approval by management."

A There again, there's a reason for that, because there may be options on that vehicle, equipment on that vehicle that are not listed in NADA, and we need approval for that.

Q But you don't need approval to pay less.

A If your evaluation is correct on your market survey, it's not a factor.

Q Now, Mr. Norman, in your deposition, you admitted that having claims representatives attempt to contribute to the profit of the division or the region is wrong. Isn't that true?

A I made that statement, and that's because we have nothing to do with profit. We handle claims. We don't, you know, depict what profit is.

Q So you admit that would be wrong.

Vol. R. 10280-29

A If that was a goal to try to get profit out of it, but we aren't involved in a profit arena.

Q Profit has no place in claims handling, does it?

A No.

* * *

Vol. R. 10280-56

RICHARD F. REYNOLDS called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HANNI:

* * *

Q What is your present occupation? Are you retired now?

A Yes, sir, I am.

* * *

Vol. R. 10280-62

* * *

Q And what did you do, then, in 1989?

A In 1989, when I sold the business, I considered retiring, but accepted an appointment to the state board of insurance in Texas.

Q Who appointed you?

A The governor, Governor Clements.

Q And was he a Republican or Democrat?

A He was a Republican, sir.

Q And are you a Republican?

A Yes, sir.

Q You were appointed for how long a term?

A I was appointed to fulfill the four years remaining on a six-year term.

* * *

Vol. R. 10280-86

* * *

Q (BY MR. HANNI) Mr. Reynolds, we have been, before we went on break we were talking about the NAIC and meetings that you attended and so on. Now, at my request, when you were employed in this case to appear as an expert witness, did I ask you, or request that you talk to some other regulators?

A Yes, sir, you did.

Q And did you do that?

A Yes, sir, I did.

Q When did you do that?

A It would have been in April of this year.

Q Can you tell the court and jury just who you talked to, the names of the people and what states they

were from? Do you have a list there of them?
Vol. R. 10280-87
A Yes, sir.
Q All right, just tell them who they were.
A The actual names?
Q Yes, if you've got them.
A I've got them right here. Louis Bergeron, former commissioner of New Hampshire; Hanly Clark, commissioner in Virginia; Cathy Weatherford, former Oklahoma commissioner; Gary Chartier, current deputy commissioner of Oklahoma; Craig Gardner, current deputy commissioner, Louisiana; Larry Maslowski, North Dakota, he's a nine-year deputy.

And by the way, Craig Gardner's been a deputy commissioner for twelve years in Texas and Louisiana. And Mary Jane Cleary, former commissioner, South Dakota; Jackie Nevin, P and C director, seven years in South Dakota. Ralph Close, the Florida deputy on market, or consumer compliance; and Jim Waterford, long-time deputy at Florida.

Ron Sheffield, Arkansas, deputy commissioner; Mike Weaver, Alabama, former commissioner; and in Texas, Lyndon Olson, former board member; Tom Bond, former commissioner; Woody Pogue, former commissioner; and Jerry Johns, which is a representative of industry, was at Southwestern Information, Insurance Information Service, it's a trade group.
Vol. R. 10280-88
And of course, in addition to those specific people that I contacted in April, I've been in touch with many commissioners and deputies ever since 1989 that I see regularly at NAIC meetings.

Q Mr. Reynolds, I don't want to know what those people told you, but I want to know the subject matter that you talked to them about in April of this year.

A Well, specifically I talked to them about three different items. Number one, I spoke to them with reference to market share of State Farm within their knowledge, the time that they served with respect to what happened in the marketplace on volume for State Farm. In other words, their market share.

Q All right.

A And two, I asked them specifically about complaint data, and complaint ratios in their state, and if it was a matter of whether it was published or not. In other words, was there an inquiry with respect to complaint ratios. And third, I asked them, in their opinion, to rank —

* * *

Vol. R. 10280-89

* * *

A The third item, I asked them about State Farm's ranking in their state.

Q With respect to what?

A With respect to treatment and service of policy holders.
Vol. R. 10280-90

Q Now, Mr. Reynolds, based on your education, your business background, your business experience, your experience as a board member of the Texas insurance department, your experience in being a member of the National Association of Insurance Commissioners, your attending of their meetings, your association and discussions with the various regulators from the various states, your attending of those meetings since you got off the board, do you have an opinion as to whether or not State Farm Auto or State Farm Fire has engaged in a pattern or practice, a widespread one, or a national one, of cheating and deceiving insureds and claimants? Do you have that opinion?

A Yes, sir, I do.

Q Will you tell us what your opinion is?

* * *

A Okay. State Farm, in my opinion, in performance and record that they have in the marketplace nationally, is above average. And when compared to the industry as a whole, you could consider them excellent, in my opinion.

Two, it's my opinion that State Farm has not
Vol. R. 10280-91
now, nor have they in the past, engaged in a widespread practice of unfair dealings, or unfair deceptive trade

practices with policy holders or third-party claimants or others in the marketplace.

And it's further, third, my opinion, that there's- - It's my opinion that they have not, in any way, shape, or form, established a pattern or practice of not dealing fairly with their policy holders and claimants. And I'm talking about a widespread practice, or practice and policy, pattern. There's a big difference.

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Vol. R. 10280-107

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CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Mr. Reynolds, you were on the Texas insurance board from '89 to '93.

A Yes, sir.

Q Prior to going on that board, you had no

Vol. R. 10280-108

insurance experience?

A That's not correct.

Q You had — Let me put it this way. You had no training or experience in the proper handling of claims.

A That's correct.

Q Do you claim to be an expert in the proper handling of claims?

A No, sir.

* * *

Vol. R. 10280-122

* * *

Q We had a witness here from Illinois yesterday, Mr. Rogers.

A Yes, sir.

Q I assume you're aware that he's been here to testify?

A Yes, sir.

* * *

Q Right. You would expect he would, someone like that would have far more knowledge about State Farm than you would.

A Yes, and I have enough confidence in the state of Illinois that if there was a pattern, widespread pattern

and practice by any company, the Illinois department would become aware of it.

Q And that, Mr. Rogers is the man in Illinois

Vol. R. 10280-123

that would be expected to spot such a pattern, isn't he?

A Or through his staff, probably, that's correct.

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Vol. R. 10280-124

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Q (BY MR. CHRISTENSEN) You're not aware of any bad faith verdicts against State Farm? That was your deposition testimony, right?

A I said I had no knowledge of any, that's correct.

Q And you haven't gained any since your deposition?

A Yes, I have.

Q You've been shown that by —

A I still don't have any knowledge of it, but I've been made aware that there are some.

Q The bad faith verdicts that we found that we gave to State Farm's counsel have now been shown to you.

A I believe there were, I don't know the names of them, but I can tell, if you enumerate it I can tell you yes or no.

Q Okay, I'm going to do that in a minute. But at the time of your deposition, when you formed your opinions after your years on the insurance commission, you didn't know of any, right?

A I had no knowledge of any class action or other suit against State Farm.

Q Bad faith, punitive damage verdicts, nothing like that.

Vol. R. 10280-125

A That's correct. You never asked me if I was aware that there were lawsuits in the state of Texas against State Farm. Or I would have answered it differently.

Q I asked you if you knew of bad faith verdicts, and you said no.

A That's correct.

Q I asked if you knew of punitive damage verdicts, and you said no.

A That's correct.

Q I asked you if you were aware of any finding of improper conduct by State Farm and you said no, didn't you?

A Not to my knowledge, I answered it.

Q I want to ask you about some of these Texas cases. By the way, when did you learn about these bad faith cases?

A From the counselor last night.

* * *

Vol. R. 10280-136

* * *

Q You're aware — Apparently you've mentioned a number that we have, I believe, and let me not misrepresent to you, eight appellate decisions out of the state of Texas during the few years that we had research, and about seven more trial court opinions or findings of misconduct on the part of State Farm. We'll save time, and you'll simply agree you don't know about any of them?

A Were all those in the same year?

Q No, they weren't. They were over several years.

A So that's fifteen over several years, is what you're saying.

Vol. R. 10280-137

Q Yeah. The point of this is, you've indicated you would know if things were going on, and I'm probing this to show there are things you don't know.

A No, I said if there was a pattern and it came up through the department, I would know about it. And we have 384 district courts in the state of Texas, and eighty appellate judges. And there's probably 50,000 cases on file in all those courts at any one time. And I'm not an expert in keeping track of all those lawsuits in the state of Texas.

Q You'll readily admit that there's a lot of misconduct by an insurance that would slip right by you, aren't you?

A That's a possibility.

Q Okay. Now, you called the state of Florida as one of your calls?

A Yes, sir.

Q I think there are more findings of misconduct against State Farm in the state of Florida than any other state we've looked at.

* * *

Q (BY MR. CHRISTENSEN) You're not aware that,

Vol. R. 10280-138

in the terms we provided to State Farm's counsel, there are nineteen cases listed in the state of Florida?

A I'm not aware of that.

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Vol. R. 10280-139

* * *

Q Okay. Are you aware that the insurance commissioner this year in Florida has gone to the media and referred to State Farm as a corporate bully?

A You'd have to go into it further to see if I

Vol. R. 10280-140

can recall it.

Q You haven't heard that?

A There's a little bit of semblance of understanding. I'm trying to recall what the article —

Q It had to do with State Farm cancelling the hurricane coverage on thousands of homeowners in Florida. Does that ring a bell to you?

A Okay, it does now, yes, sir.

Q So you have heard that?

A Yes.

Q At least as of the time your deposition was taken you didn't know about the various class actions pending against State Farm around the country, or that have been against State Farm in the past.

A And I answered that, I have no knowledge, correct.

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Vol. R. 10280-154

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Q (BY MR. CHRISTENSEN) [I]f you could turn to page 60 of your deposition.

* * *

Q . . . Moving to the bottom of the page, to line 17, let me review with you your testimony. And your testimony was May 2nd of this year, was it?

A Yes, sir.

Q I asked you, "I am assuming that you have never reviewed State Farm's claims manuals?"

And you said, "No, sir, I have not."

Is that still true, you've not reviewed their manuals?

Vol. R. 10280-155

A That's correct, I have not seen any State Farm claims manuals.

Q "You're not really familiar with their claims, with what their claims handling practices are?"

Your answer was, "No, sir, not me personally, no."

"Are you familiar with State Farm's PP&R program?"

A No, sir.

Q And your answer was, "You'd have to tell me what the PP&R program is."

A That's correct.

Q And I told you it was performance planning and review, and you said, "No, sir, I am not."

I asked you, "Have you ever heard of that?"

And you said, "No, sir."

I asked you, "Are you aware of State Farm's emphasizing reducing or controlling average pay per claim?"

Your answer was, "No, sir."

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Vol. R. 10280-164

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Q Now, you would concede, would you not, Mr. Reynolds, that this jury, who's seen a lot of State Farm manuals, State Farm individual goals and PP&Rs from a number of years, and a great volume of documents, they've seen a lot of things you haven't seen.

A That's correct.

* * *

Vol. R. 10280-182

Rosa Smith.

ROSA SMITH called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

* * *

Q Where do you work?

A I work for State Farm Insurance in Ogden, Utah, as a bodily injury claim representative.

Q And is your employment with State Farm Mutual

Vol. R. 10280-183

Automobile Company?

A Yes, it is.

Q When did you first become employed with State Farm?

A 1979.

* * *

Q And how long have you been involved with, as a bodily injury representative?

A Ten years.

Q And have you worked almost that entire time in the state of Utah?

Vol. R. 10280-184

A Yes.

* * *

Vol. R. 10280-200

Q Mr. Davis has also testified that it was State Farm policy to treat claimants or policy holders differently based upon their station in life, their economic status, for example. Has that been the policy that you've been taught by State Farm to handle here in Utah?

A We have never been taught to treat anybody or anything any differently.

Q For example, he's suggested that if you were dealing with a retired couple, you'd try to settle with them for less because they'd be less likely to sue than you would, say, somebody who's not retired, who comes in in a large car and an expensive set of clothes. Has that been the approach you've been taught to take?

A I haven't ever been taught that approach. It could be my mother, or my aunt, who doesn't understand the insurance processes, and I want to take care of those people.

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Vol. R. 10280-212

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CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10280-216

* * *

Q You admit that giving insurance claims people incentives, having awards or recognitions or contests for paying less on claims would be improper.

A Yes.

Q You claim that State Farm doesn't do it.

A State Farm does not pay less than the fair.

Q Isn't that true? You claim they don't have contests.

A I call them promotions, not contests. A contest is when you are putting one against the other. A promotion is a promotion. I think all companies have those.

Q Let me refer you to page 10 of your deposition from Sunday.

A I don't have it.

Q Do you want to share mine? I'll let you look on mine.

MR. SCHULTZ: I've got one.

Q (BY MR. CHRISTENSEN) I asked you, beginning on line 16, "You're not aware of any contests or awards or recognitions that are given to claims representatives

Vol. R. 10280-217

relating to saving money on claims?"

And your answer was, "No," right?

A Yes.

Q Since then you've been told that we have a document that Samantha Bird gave us about pride week, and a competition dealing with cost savings in several areas.

A I have not seen that document. Samantha Bird was not in my area.

Q Was Ogden in your area?

A Ogden is in Utah.

Q This is September, '86, as far as pride month, "October pride month will have the following categories of competition." Doesn't that sound like a contest?

Mr. Humpherys just pointed out something to me, let me show you. Do you see where this meeting was held? Is that where you work?

A Yes, I do.

Q You worked there in September of 1986?

A Yes, I did.

Q Now, doesn't this sound like a contest to you?

A That was a management meeting, and I'm not management, so I'm not familiar with what's in there.

Vol. R. 10280-218

Q You don't have a clue about Ogden and Orem's offices competing against each other?

A I did not.

Q Did you miss pride month in '86?

A I may have. I may have been on storm. I don't know.

Q You may have been gone the whole month?

A I do go the whole month. Sometimes I go two.

Q Here again, we've got Ogden and Orem competing, and the areas of competition are on cost savings, aren't they?

A That is not in my area of claims handling.

Q But you testified that State Farm doesn't have contests.

A I did.

Q You were wrong, weren't you?

A I guess, if that's what you're considering those.

Q Now, were you gone for a whole month two years in a row?

A Yes.

Q So you think you were also gone in August of 1987?

A Sir, I can't remember August of 1987.

Q Well, let me show you another pride month.

Vol. R. 10280-219

It looks like there's becoming quite a rivalry between Orem and Ogden in competition. Do you see that?

A "Orem will compete with Ogden. The following categories have been established for competition, as well as awards."

Q Do you see down here, estimatics, a $50 dinner. One award for the state will be given to the estimator who effects the highest cost savings on appearance allowance, quality replacement part, equivalent part estimates."

A It says that, but I'm not an estimator so I was not aware of that.

Q Yet you worked in the Ogden office, and you didn't have a clue that this was part of pride month?

A I did not.

Q Is any part of this contest in your area?

A Agency referrals would be in my area.

Q Mr. Davis was telling the truth about contests, wasn't he?

A No, he was not. He was using the word "contest" to take advantage of the people. That, from what I saw on the board, was not to take advantage of our customers.

Q You said there weren't contests, period, didn't you?

Vol. R. 10280-220

A Yes, I did.

Q As far as you know, at least your sworn testimony Sunday was, as far as you know Bruce Davis had done a good job in Pueblo?

A As far as I knew, I didn't hear anything negative.

Q And you've not known Bruce Davis to be dishonest, have you?

A No.

Q And you don't have your PP&Rs from back when, the time frame Mr. Davis was working for State Farm.

A No.

* * *

Vol. R. 10280-231

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(The jury left the courtroom.)

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Vol. R. 10280-234

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THE COURT: Well, let me just comment on the record. There's certainly been some latitude given in the scope of cross and direct. A lot of the testimony that's gone beyond that have, most of it has come without objection. And it's not my inclination, at least at this point, to interject myself when I believe there's some testimony that is not objected to that goes beyond the scope. I've done so on occasion, but that isn't my normal practice.

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Vol. R. 10280-235

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I do agree that there should be some latitude given in attacking credibility, and my intention was certainly to allow a search into credibility. But credibility can also be used as a vehicle for opening a door to ask a party all sorts of questions, and it was, it's my view that when you attempt to make an attack on credibility, that that has to be clear on the questions that are asked and presented as such, and then the court will rule accordingly.

And I think I was, we had an example today with Mr. Reynolds in which I allowed a rather wide ranging examination of him, because I believed it did go to his credibility as a witness, and that's been my inclination.

But when we had a virtually one or two-minute examination of a witness, certainly an attack on credibility would have been allowed, but it wasn't intended to be an open invitation just to go into all sorts of other testimony, and that seemed to me to be

Vol. R. 10280-236

what was being invited, and the court denied that.

So I wanted to be clear where I am on it. I'm not saying credibility isn't fair game, but it's got to be a clear credibility attack, and not just a way of opening up

another front on a witness.

* * *

Vol. R. 10280-246

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MR. BELNAP: The other issue, Your Honor, is we, this has a thread back through the trial and also to motions in limine that have been ruled on, but we had two bench conferences today on the subject of these cases that were being used to cross examine Mr. Reynolds about. And I just wanted to make a record that we feel

Vol. R. 10280-247

that the use of those cases, which were all fire company cases, number one, number two, counsel referring to his summary of the facts or the holdings in those cases where the witness, there was no foundation from this witness that he had any knowledge of them, and so the purpose to go into those holdings was there was no foundation, even if they were relevant, which we don't believe they are.

We just wanted to cite that for lack of foundation, lack of relevance, prejudice, and lack of similarity to anything relating to Campbell in terms of a third-party auto case, where these were first-party fire cases, just doesn't seem appropriate, Your Honor. And I think that's what we discussed at the bench conference, and wanted to just make a record on that.

THE COURT: Okay.

MR. CHRISTENSEN: I have the court's order, dated May 28th, 1986, in this case on this subject. The court had us produce the list of cases to counsel, which we did some time ago, and the ruling was we were limited in our case in chief, it was expressly allowed that we could use those cases for impeachment in rebuttal. And I guess this is all in writing, I don't need to read it in the record, but I think what, the way we've been using the cases is exactly consistent with the pretrial

Vol. R. 10280-248

order issued by the court on this.

THE COURT: Let me just comment, also, on the record. For two reasons. One, I think that, as I

understood the testimony and as I ruled on the testimony, it was intended to be impeachment of the witness. And those fire cases have, in my mind, have had legitimacy only to the extent that either they could be tied into the fire, into the auto policies and practices, or auto claims, or could be used for impeachment. At least that was how it was at the initiation of this case.

But I come back again to the wide use of that by defendants in examining witnesses, more than anybody else, I guess, Mr. Crandall is the one I think of, but it has come up repeatedly where there has been testimony elicited on fire company cases and fire company matters, and it seems to me that that door has been certainly opened for a wide use of those cases for impeachment purposes and for matters which are related. And I'm just, my view is that as this trial's gone on, there's been more and more use of it by the defendant, and that has then invited a response.

Now, as far as these insurance commissioners, I consider this a problematic area, because there certainly is some, there's certainly some contention on

Vol. R. 10280-249

the part of the plaintiffs that the insurance commissioners don't really have a very full grasp of what's going on with the insurance company, at least with respect to claims abuses. That's what Prater testified to, and I believe that's what DeLong testified to, and it seemed to me there was at least one other witness.

And then when they're put on and they purport to have such a comprehensive nationwide knowledge and are saying, "Boy, if there was something going wrong, if there was —" You know, when they say pattern and practice, of course that's a loaded term, and a term that we haven't really defined, because it has different meaning under the rules of evidence, and a different meaning in the concept of punitive damages, and a different meaning as to how plaintiffs would use that, and how defendants would use that.

It seems to me that the jury certainly has a right to hear cross examination of a witness that purports to

have that kind of comprehensive knowledge to show that, "Well, there are a lot of things he doesn't seem to know about, that seem to have some general significance to the policy holders of this company that he purports to have such knowledge of their fair practices." And that's why I've allowed it to come in.

Vol. R. 10280-250

It seems to me to be fair cross examination in light of the breadth of the testimony that they're offering. And there was nothing limited about the way this gentleman testified today, and that's why I allowed it. So that's, I don't want to spend a lot of time arguing about it, but that's the court's rationale, and that's why that examination was allowed.

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Vol. R. 10280-251

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MR. HANNI: Well, I guess what I am talking about, here, is using them at all on cross examination of the regulators. Because to take fourteen cases, or seventy cases out of the millions and millions of claims that are going on, I don't think is fair cross examination. And particularly when those are litigated lawsuits, and regulators don't get into litigated cases.

And to ask a witness if they're aware of one or two or half a dozen or fifty cases out of thousands

Vol. R. 10280-252

and thousands and thousands that are pending in the judicial system, I think is very unfair. And I think to let counsel tell about all the facts of the case and give the name of it and say, "It's a class action involving," in one sentence, he doesn't have to go on and on and on forever, and I think that's what I think is prejudicial.

THE COURT: I think we're starting to repeat ourselves, but I'm going to make it real clear. If you're going to put on an insurance commissioner, or someone who's a former insurance commissioner who comes in here at, being paid as an expert witness, and calls around his associates around the country and then says, "Boy, if there were any serious claims problems with this company, I'd know about them," and with that, with the

appearance of some regulatory authority, and with that kind of strong testimony, it seems to me that he, that that sort of, putting on that kind of testimony invites an examination of how much he really knows, because I think there is certainly good reason to believe that insurance regulators, insurance commissioners, insurance department employees don't spend a lot of their resources investigating claims practices. I think that's what, that's a major issue.

And I think that if you're going to try to

Vol. R. 10280-253

put them on as if they know all this, then they're going to have to be subject to examination that maybe they don't know as much as they purport to know. I think it's a very, it's a very hotly contested issue in this matter, and I think you've presented it to this jury as a way of overcoming the arguments that are being made by the plaintiffs.

And I don't fault you for doing it, I think it's certainly one way of presenting your case, and you have that right to do it. But you've also got to recognize that when you're making claims, as these insurance regulators are making, before a jury that doesn't understand the regulatory process and is hearing someone who says, "Boy if there's a problem we'd know about it," then they're going to have to be asked questions to test that.

And if the way to get to it are major class actions, punitive damage actions, excess liability actions, bad faith actions in their very state that they have no knowledge about, I think it's just something that's fair examination. And I don't think that the facts of those cases should be trotted out in some way by the facts themselves to create a problem, and that was the issue that we were addressing. But as far as whether those cases are legitimate inquiry, I believe

Vol. R. 10280-254

they are, I've ruled on that, I think I've been clear on that.

MR. HANNI: I think you have, Your Honor, and I just want to respond, if I may, to what the court's said.

We are putting these regulators on, only on the issue because the plaintiff claims there's a national policy and pattern and practice to cheat insureds and claimants. That doesn't mean that isolated things don't happen. And we put them on only to show that there is no national policy or pattern and practice, and that if there were such a thing, they would know about it.

And whether they know about it, twenty-five cases or thirty, or a hundred out of millions and millions, thousands and thousands of cases that are in the judiciary, whether they do or don't, I say, is irrelevant to that issue. Now, the court disagrees and that's fine, but that is our view of it. It's totally irrelevant.

THE COURT: In your view of what a pattern and practice is and how to show it is also something that is very much in dispute. To attack it statistically, we've spent a lot of time on that. And maybe the jury will accept that. I don't know. But

Vol. R. 10280-255

there's certainly another way of addressing it.

We're only talking about bad faith cases. We're not talking about general claims. You may well have a winning argument on that issue as to how you define pattern and practice. But as I have been hearing the evidence, I don't think that it's conceded by the plaintiffs that the way to attack that question is by looking at some statistical analysis that starts with the number of policy holders or the number of claims that are filed. Most of which have nothing even remotely related to an excess damage aspect to it. And so I think the record's made.

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Vol. R. 10281-4

SALT LAKE CITY, UTAH; JULY 18, 1996; A.M. SESSION

* * *

WILLIAM S. BROWN called as a witness by and on behalf of the Defendant, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

CROSS EXAMINATION BY MR. HUMPHERYS:

* * *

Vol. R. 10281-56

* * *

Q And we'll be going through some of your PP&Rs right now, but do you recall that you continued to emphasize, over and over, and throughout your PP&Rs, that indemnity costs be controlled, reduced in some form or another?

A On the cost and all that? Yes, it's an awareness goal that you look at to compare where you are and where you have been.

Q Isn't it true, Mr. Brown, that you placed heavy emphasis on reduction of average paid claims?

A I don't recall that.

Q Okay, let's start looking at some of your PP&Rs. Back in 1983, do you see here under cost control goals?

A Yes, I see that.

Q It says, "Attain 1983 cost goals as per addendum by, holding superintendents accountable for costs." Doesn't that mean, Mr. Brown, that if a unit

Vol. R. 10281-57

superintendent was not controlling their average paid claims, that you would hold them accountable for it?

A We tried to decrease the cost of doing business all the time to keep our premiums in line.

Q And you'd do it by making your superintendents accountable for reducing the cost, didn't you?

A Well, that means they should be aware of it.

Q So making them accountable is only making them aware; is that right?

A They need to be aware of their cost in their units.

Q All right. And then down here, regarding 1983 cost goals, again, part of the same PP&R, you're talking about paid average loss, and you're setting the goals relating to the various coverages, right?

A That's what we would have expected that to be for 1983. If that's the year for it.

* * *

Q Isn't it true, Mr. Brown, that you received

Vol. R. 10281-58

promotions, and that you were evaluated on how well you did in reducing average paid claims?

A I don't think that average paid cost had anything to do with any of my promotions.

Q Do you recall when you were trying to seek a transfer and a different circumstance in 1984, that you prepared a personal resume? Do you recall seeing that?

A Sure.

Q And you recall seeing here where you're listing your various qualifications. Didn't you submit that to State Farm as part of your qualifications to seek your other position that you were seeking?

A Yes, I was, the resume was submitted.

Q All right, let's now look at what you considered to be the most important accomplishments on page 2. Let's read, "Over the past three years, I feel that my most important accomplishments have been in developing improved agency management, claim management relations and cooperation, increasing cost effectiveness by substantially increasing PPE." Tell us what that means.

A PPE is policies per employee.

Q All right. And then, "By meeting or exceeding every cost-related goal." Wasn't that important to you, as one of your most important

Vol. R. 10281-59

accomplishments, that you had met or exceeded every cost-related goal?

A It said by meeting or exceeding nearly every cost-related goal. Some were not met, some were met.

Q And yet it was just awareness; is that right?

A To me that's all it's ever been, that's correct. And to anybody else, I think, with State Farm. I've never heard anyone say that they ever were given any special awards or the reverse on cost goals.

Q Let's look now, we have redacted by State Farm some of the other names on a memo from you dated December 20, 1984. Let's see how you were addressing this issue, Roman Numeral II, second paragraph.

"The second goal was a series of actions in an attempt to control our cost picture in Utah. As you are aware, we have a terrible profit picture now, primarily due to our catastrophe losses and our high increases in frequency of losses. I am rather proud of our severity accomplishments, since we did have an 8.3 decrease in BI severity so far throughout 1984."

And you're saying that this was just an awareness?

A And we held the increase in property damage up to 7.5, and an increase of 8.4 in collision. We had increases in some and decreases in some.

Vol. R. 10281-60

Q And you were touting, were you not, the decreases, and trying to justify and explain the increases.

A I was saying that I thought we'd made some ground in that by proper training our people and having a professional claim organization, yes.

Q Okay, let's look what else you said here, starting with this sentence beginning, "Our productivity compares with like divisions and with the company as a whole, and shows that our average costs under the property coverages are much lower than any of our comparative divisions, and much lower than the company as a whole."

Isn't it true that you're justifying to your superior, Mr. Brown, and bragging to him about how you are able to succeed in your cost reduction goals.

A I was pointing out what had happened in the region. Or not the region, in my unit. I wasn't bragging about anything. I would have little to do with the outcome of any of that, anyway.

* * *

Vol. R. 10281-61

* * *

Q Isn't it true that under this PP&R system, forty-five days before raises and, or not promotions, but raises are determined at the end of each year, these PP&Rs are supposed to be evaluated by the person's immediate supervisor?

A That's normally the procedure, yes.

Vol. R. 10281-62

Q And that raises are determined partly on that evaluation, aren't they?

A Raises — We look at that as being one of the factors. We look at all factors on an individual when you're talking about a raise. The PP&R is part of that.

Q All right. Let's look, now, for example, in 1991. This is your PP&R, and this is a summary of your evaluation, and that was performed by your supervisor, wasn't it?

A This would have been done by my supervisor, yes.

Q And there wasn't a lot done in terms of your evaluation, at least in written form, but let's look at one of the three things mentioned.

"Bill, through his unit, has been very active in supporting our goal of trying more cases to attempt to get control of BI indemnity costs. Bill's results have been very good."

Isn't it true that you are evaluated on how well you control indemnity costs?

A I think, again, I think he's just pointing out something, there. We were trying more cases, juries have been telling us for years at that point, because we weren't trying enough, because we were winning nearly

Vol. R. 10281-63

all of them. And that's just saying, yeah, we were trying some more cases, but we were still winning most of them, I would get from that report.

* * *

Q (BY MR. HUMPHERYS) Okay, this is 1992. And let's look at one of your goals, Mr. Brown, in 1992. This is trial page 235 of the same exhibit, Exhibit 151. Now looking at the very top one, "Hold indemnity costs for BI

to the cost of living index percentage increase, or less." Now let's look down here toward the bottom. This is your review, isn't it, of the goals?

A This is a part of a part, here.

Q You're saying, "I feel very good about our unit's accomplishments." Isn't it true you were evaluating what goals you had?

A That's a general statement, it looks like.

Q Okay, starting right down here where it says, "Our indemnity."

"Our indemnity payments have decreased

Vol. R. 10281-64

substantially this year. We met our allocated loss adjustments and other budget goals. The unit morale is high. We had a very good corporate operations review."

Mr. Brown, isn't it true that you have continually reviewed your subordinates on the basis of how well they reduce average paid claims?

A No, that's absolutely wrong. Our average paid costs go up and down in a unit each year. And it's determined more likely than court decisions, if it comes out in changes in the law. There's a lot of things that go into determining what the average paid cost is.

Q You had the same goal in 1993; do you recall that?

A They very well could be, because again, we're going to just state what's happening in the area.

Q All right. Page 255, or trial page 255 of the same exhibit. Under D, "Indemnity goals." Do you see, under paragraph 2, your goal?

"Maintain present BI indemnity costs at present level or less."

And then your comment, "Indemnity costs are continuing on a downward slide. Through three quarters of 1992 our average was $21,140, and this is down to $18,050."

Vol. R. 10281-65

You're succeeding in your goals, aren't you?

A The cost has gone down, as that points out, there. But the reason for that is that we didn't have any real large verdicts. We didn't have any real large serious

injury cases. When you don't have those, the average paid is going to decrease.

Q All right, Mr. Brown. Do you agree that these reduction goals are inappropriate?

A I think that the goals right now, just simply because, what I was saying, you have very little control over those, there's just no reason for them, and I think that's what they did in '94 or '95, whenever this was.

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Vol. R. 10281-81

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REDIRECT EXAMINATION BY MR. BELNAP:

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Vol. R. 10281-89

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Q Has that ever been a condition for you, or any of the employees that you've supervised, in terms of their working at State Farm?

A Again, not as far as it says they're a condition for promotion or merit pay increase.

Q Have you ever instructed any of the people that you've supervised, Mr. Brown, that they should pay less on a file because of your awareness and consideration of costs in the division?

A Absolutely not. That would be absurd. Again, you've got to evaluate every single case based on the facts of that case.

* * *

Vol. R. 10281-124

ROBERT D. NOXON called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified

Vol. R. 10281-125

as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q Who do you work for?

A I've worked for thirty-one and a half years for State Farm Insurance.

Q Where were you born and raised, Mr. Noxon?

A I was born in Central Illinois, and lived there until 1979.

Q And is that when you moved to the state of Utah?

A Yes, I got out to Utah April 1st of 1979.

Q When did you start working for State Farm Insurance?

A I began with State Farm in, on February 1st of 1965.

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Vol. R. 10281-127

* * *

Q Can you just briefly walk the jury through the different positions that you've held at State Farm since then.

A Since I started?

Q Since '79.

Vol. R. 10281-128

A Okay. When I got to Utah in April of '79, as I mentioned, I was a field claim representative 3, I believe it was, and in November of 1980 I was promoted to a claim supervisor in the Murray service center. I held that position for eighteen months, and I became a claims superintendent in Ogden, Utah, in July of 1981.

In January of 1983, they asked me if I'd take a lateral transfer to Colorado Springs as a superintendent. I did that in '83, I was there until March of '85, at which time I became a divisional claim superintendent back in Utah.

Oh, and then one more step. In 1993 — these dates kind of run together after a while — in 1993, I decided that I enjoyed St. George, Utah, a lot more than I did Salt Lake, and I asked the company for a transfer to- - Well it would be a transfer and a demotion, because they didn't have a divisional claims superintendent in St. George, so I became a superintendent in St. George, Utah.

Q And is that where you're currently working?

A Yes. I should say that I have three offices that are under my supervision, St. George, Cedar City, and Richfield, all three of those offices report to me.

Q Mr. Noxon, with respect to the Campbell file, you've indicated to this jury that you became a claim

Vol. R. 10281-129

superintendent in Ogden in July of 1981; is that correct?

A That's — Yes, that was —

Q And as a new superintendent, do you recall the Campbell case?

A Well, yes, I do. Obviously.

* * *

Vol. R. 10281-147

* * *

Q Now, Mr. Noxon, the jury last fall made a determination that State Farm, when they tried the case, when the case was tried in Logan in 1993 —

A '83.

Q '83, thank you. There was a substantial likelihood of an excess verdict, and that the decision

Vol. R. 10281-148

to try the case was not reasonable. Are you aware of that?

A I am, yes.

Q Do you accept that jury's conclusion from last fall?

A Well, I'd have to say I accept both juries' verdicts. I feel that's the system that we work with. I do feel that there were some things that maybe the jury in October weren't aware of that might have made them look at it differently. That's my opinion.

* * *

Q . . . In hindsight, Mr. Noxon, with the benefit of hindsight, knowing what

Vol. R. 10281-149

you know now, can you tell this jury, as a superintendent, if you had this to do over again, would you have settled the case in Logan?

A Well, I wish I could make all my decisions through hindsight. This, the business that we're in is a business of making judgments, and sometimes you, hopefully you make right judgments.

Two juries have told me that I made a wrong judgment in this case, so I would say, yeah, I'd have settled the case. I feel that Bob Noxon and Bill Brown and everybody that was involved in this made a judgment, and a jury's told us we were wrong. I'm not going to sit here and say the jury's wrong.

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Vol. R. 10281-172

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CROSS EXAMINATION BY MR. HUMPHERYS:

Q Mr. Noxon, we've heard testimony today that State Farm does not keep any record of bad faith claims, punitive damages, excess verdicts, that type of thing. Has that been your experience?

A That's — Yes, it is.

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Vol. R. 10281-173

* * *

Q . . . Let me have you draw your attention, now, to an office memo, this is dated 1986, from Paul Short to Bob Noxon. That's you, isn't it?

A Yes, it is.

Q You were the divisional claim superintendent at the time, Paul Short was the claim superintendent.

A The same as claim supervisor.

Q Supervisor, excuse me. And it's apparently minutes of a meeting, or staff meeting notes; is that

Vol. R. 10281-174

right?

A That would be correct.

Q And you have all of these people that are on it that were attending. I'd like to show you now- - When it says from Paul, does that mean he was summarizing the events of the meeting?

A I would assume that's what he means, yes.

Q And you received a copy of this, would you have not?

A I assume I did, yes.

Q And you would be directing these meetings, wouldn't you?

A I was the divisional, I was the only divisional there at the time.

Q So that means you would be directing the meeting and presiding?

A I assume it would, yeah.

Q Would you read us item number 6?

A "A list is to be maintained for these types of losses. Those falling into this category would include claims for punitive damages, bad faith, excess exposure."

Q Et cetera.

A Et cetera.

Q Aren't you making that assignment to Paul

Short back in 1986, to keep a record of those cases?

A I don't know that I am or not. I can't ever remember keeping lists of those, no.

Q Are you saying that that isn't what it means? What it appears to be?

A That's what it appears to be. I'm just telling you, I don't ever remember keeping a list of those. And I don't know who told him to do that.

Q Weren't you presiding in this meeting, Mr. Noxon?

A I wasn't the only one at the meeting. There were other people allowed to speak.

* * *

Q Okay. And so you made that assignment to Mr. Short, didn't you? To keep those records.

A Well, I don't think that's an assignment to Mr. Short. That's his saying, the way I read that, that's his saying that that's what we should be doing. That's not his assignment, no.

Q "Is to be maintained." That's not just a

"should." That is an "is," isn't it?

A I didn't disagree with that.

Q Where are those records, Mr. Noxon?

A I don't know that any were ever kept. I can tell you there weren't any kept locally.

Q This is a local meeting, isn't it?

A It is.

Q Would you agree with me, Mr. Noxon, that one of the hallmarks of someone who is not telling the truth is someone who changes their testimony under oath?

A I believe you've asked me that question once before, haven't you?

Q And you admitted it, didn't you?

A If you change your testimony, I think that's true. I don't see what's wrong with a person being able to change their opinion.

Q All right. Let's talk about, now, the changes in your testimony.

A I thought those were changes in my opinion.

Q Okay, let's talk about it and see. Do you recall your deposition being taken in 1994?

A Yes, I did.

Q And do you recall testifying last October?

A Yes, I do.

Q And do you recall, at least in six different

areas you changed your testimony.

A No, I don't.

Q All right, let's go through them, then, and let's explain to the jury the changes you made, and why.

All right, the first one, do you recall in your deposition testifying that at the time of the claim committee report you did not have adverse evidence, and that it was not proper to evaluate a case without adverse evidence?

A I recall — Can you repeat that for me?

Q Sure. You recall in your deposition testifying that at the time of the claim committee report you did not have adverse evidence, and that it was not proper to

evaluate the case without the adverse evidence.

A I did testify that way, and I would go on to say that you, we had every intention of getting the adverse evidence, and did.

Q All right. And at the trial, however, you testified that you did consider the adverse evidence, didn't you?

A I said that we had talked about adverse evidence when I put on my claim committee, yes.

Q All right. Now, I'd like to test that a little bit more, because of what you've said today.

Vol. R. 10281-178

We've all seen this. This is the claim committee report. Do you see that?

A Yes.

Q Now, I'm showing it mainly for your benefit to refresh your memory. Here Mr. Brown and the other claim committee members are saying, "After a careful review of the entire facts, the committee feels that the insured driver's actions," that's Mr. Campbell, "were not a proximate cause of this accident, and we should defend any action brought."

Now, isn't it true, Mr. Noxon, that you had insufficient information to draw that conclusion at the time the claim committee report was done?

A It's true that we didn't have all the information. I felt that we had much information at the time the claim committee was done. If I were doing the claim committee in 1996, I probably would have waited six months before I did it, but I didn't do that in 1981.

Q Now, we got even some conflicting testimony from you during the trial. Do you recall during the trial last October that you said that you reviewed the adverse evidence orally, even though it wasn't in writing? Do you remember saying that in your testimony last October?

Vol. R. 10281-179

A I remember talking about the fact that I felt like I presented all the information that I had at the time, either orally or in the report to the committee, yes.

Q All right. Let's look now at your testimony from last October. . . . Now I'd like to draw your attention to page 1,469 of the prior transcript.

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Vol. R. 10281-180

* * *

Q (BY MR. HUMPHERYS) Look at line 19 and read with me. "All right, now, with this context —" Now, we'd just been talking about what you had and what you didn't have at the time of the claim committee report; do you recall that?

A Yes.

Q All right. "Now, with this context, State Farm prepared a CLR with essentially no adverse evidence. Do you agree with that?"

Your answer was, "That's right."

"Let's go to the claim committee report." The CLR wasn't what we just looked at. This is the claim committee report. The CLR is what Ray Summers prepared; is that right?

A That's correct.

Q "Tell me what, if anything, in your claim committee, the record should show is adverse to State Farm's position."

Vol. R. 10281-181

And your answer? Please read it?

A "Nothing in that report."

Q So you agreed that there wasn't anything in your claim committee report that was adverse to Mr. Campbell. Now, let's go on. Line 3, "All right, do you agree again, Mr. Noxon, that in order for a company to fairly evaluate a claim they must consider adverse evidence?"

And your answer, "I think, during the course of the investigation, yes, they should."

"And so at the time of the claim committee report they had no adverse evidence?" And read your answer, please.

A "At that point, no."

Q Now, how on earth, Mr. Noxon, have a claim committee state that they made a careful review of the entire facts, and can reach the conclusion that there is no fault on Mr. Campbell, and this case must be defended, when you have just admitted there was no

adverse evidence in the claim committee report?

A As I mentioned to you in October of last year, the fact that we did not have all the adverse, any of the adverse evidence at that point, we had indications that there were adverse witnesses out there, and we had every intention of getting those people's

Vol. R. 10281-182

version of this accident by means of depositions. I mentioned that in October, and that's the way we did it.

Q Okay.

A We made a decision, and then we evaluated it from then on.

Q Okay, I just want to make sure that we understand. I gave you an opportunity later on, on page 1,482 on our version, but I'm not sure on yours, maybe it's 1,481, and I asked again on a separate occasion.

MR. BELNAP: 1,481.

THE WITNESS: What line?

MR. HUMPHERYS: Line 23.

Q (BY MR. HUMPHERYS) "Was there any adverse evidence in your file at the time you did your claim report?" And what was your answer?

A "There was not." Keep in mind that there was a CLR which talked about the fact that there were witnesses out there who were adverse to us. And there was a police report who said that there were some people who were, he wasn't sure how they were testifying. That was not in my claim committee report, but that was in our file, and we were going to follow up on that, and we did follow up on it.

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Vol. R. 10281-185

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Q All right. So you have first said that it was inappropriate for the claim committee to have reached that determination back in 1994, and you changed that testimony in '85. That's correct, right? Have we gone through all of that now?

A Which dates are you giving me? '84 and '85?

Q '94. If I said '84, I'm sorry.

A Okay.

Q It would be '94 that, when we took your deposition, when you said that it was not proper to evaluate the case without the adverse evidence as was done in the claim committee report?

A I'm saying, what I meant then and what I'm saying now is that it's not proper to evaluate the case without all the evidence, and we got the evidence.

Q But at trial last October you said you had sufficient adverse evidence in order to evaluate the

Vol. R. 10281-186

claim committee report.

A We made a determination on the claim committee at one point in time, with the idea that we were going to get all of the information, which Mr. Bennett did in the form of depositions. Once that information was in, we can always file a claim rehearing and decide if we want to stand on our position of defense, or to settle the claim.

Q But you never did, did you?

A Never did what?

Q Never did refile the claim committee, didn't you?

A We —

Q Please answer my question.

A I am, sir.

Q Did you ever file another claim committee request, other than this one that we've just seen, until after the trial?

A We evaluated that case every time a piece of information came in, and we made the decision with the information that we had, that we felt we could defend our insured.

Q Let me ask it one more time. Did you do any further claim committee review after this one we've just

Vol. R. 10281-187

seen, in September of '81, until after the trial in September of 1983?

A The only reason you would do a claim rehearing is if you felt that there was other information which had changed your original evaluation, and we did not feel that that came in.

Q And so there was no other claim committee review, was there?

A That's just what I said.

Q That's all I needed you to say. All right, let's go to the second area you changed your testimony.

Do you recall in your deposition in 1994 that the claim committee evaluation, this one we've just looked at, was premature in light of the lack of evidence?

A I think I said a few minutes ago that if I were doing this same committee now, I would have waited later in the handling of the file.

Q But isn't it true last October that you then testified that the information you had at that time, in September of '81, was adequate for you to reach the conclusion that you reached?

A I felt that the information we had indicated that Mr. Campbell was not at fault, yes.

Q Okay, let's look at a third area where you

Vol. R. 10281-188

changed your testimony. In 1994, in your deposition, didn't you admit to me that the evidence you had was insufficient in September of 1981, quote, "definitely," or to conclude, quote, "definitely there was no negligence," end of quote?

A I believe what I told you in 1994 —

Q '94.

A — was that I think the use of the word "definitely," "we're definitely going to defend this," when you sit and pick a case apart for fifteen years, that sounds very strong. I also feel that that's not necessarily the way that we do our business. You're going to evaluate the claims, and if you see something to make you change your mind, you can still do that. The word "definitely" is very strong, yes.

Q And you admitted that that was probably, the evidence was insufficient to have reached the conclusion, in September of '81, that it was definitely not a case of liability.

A If you reach that decision and never take a look at the information again, yes, that would be wrong. We took, we looked at the information as it came in.

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Vol. R. 10282-4

SALT LAKE CITY, UTAH; JULY 19, 1996; A.M. SESSION

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GARR M. OVARD called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q Who are you employed by, Mr. Ovard?

A I work for the state of Utah, the insurance department.

* * *

Vol. R. 10282-18

* * *

Q Let's say that you've come to a decision, as a department, that there needs to be some action taken against a particular insurance company for some complaint that's come in. In terms of the process of handling that, can you walk us through the stages that that would take before it would ever become a court case?

A Well, initially, if we have determined that there's something inappropriate that's happened, there's

Vol. R. 10282-19

many, many things that might occur. It might involve, depending on the situation, it might involve speaking with the individual or entity, it might involve — And that could be an admonition to not do what they've done, or to do things differently, verbally.

We may do that in writing. We may censure or admonish them in writing privately, we may publish it in industry publications that we put out every so often. It may be that we levy forfeitures against them. Our forfeitures can be astronomical. They range from hundreds of dollars up to $10,000 a day, up to stopping the company from selling policies, but paying their claims. There are all kinds of things that we're able to do against companies.

If they, ninety, approximately 90 percent of the time, maybe perhaps more, we meet with the individuals. And

we have quite a few attorneys in our department, they'll meet with the individuals or the entities, and explain to them what we have decided that they have done, and we will ask them to sign a stipulated agreement.

And the only time that we'd ever go into a courtroom situation is if they disagree with the stipulated agreement. And then we would be forced to take them into the courts, which we do on occasion.

Vol. R. 10282-20

Q Mr. Ovard, in your experience at the department, have you been involved with a particular company where they wouldn't cooperate in this administrative process, and that required ultimately a court proceeding to obtain an order against them?

A Personally, yes.

Q And in your investigation, in that process that led up to that — Well, let me rephrase it. As a result of your investigation, was there an order entered against a company that was doing business, or trying to do business here in the state of Utah?

A There was.

Q What was the nature of that order? What would you call it?

A Cease and desist.

Q So you — Let me rephrase it. Did the department ultimately request and receive an order putting that company out of business in Utah?

A We did.

* * *

Vol. R. 10282-31

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Q I'd like to ask you, Mr. Ovard, from your dealing with and receiving telephone calls over the years, and your discussions with State Farm and the people that you've received phone calls from, the information that you've gotten from computer printouts, or this E-mail I think you called it, other trade journals and the like, do you believe that if there was a pattern or practice of State Farm cheating its insureds and people that are claiming against its insureds, that you would know about that?

MR. HUMPHERYS: Your Honor, I object. Hold on just a minute. This man is a government regulator, he has just come in and said that he's going to further investigate this case. He has a direct conflict of interest in giving any opinions in favor of State Farm. And I object to that. That is a legal conflict of interest.

MR. BELNAP: Your Honor, I object to that. That- - And let me state why that is not true, if I may follow up with a couple of questions.

THE COURT: All right, without him asking,

Vol. R. 10282-32

answering that question?

MR. BELNAP: Certainly.

THE COURT: All right.

Q (BY MR. BELNAP) Mr. Ovard, will you be doing an examination of State Farm, or will it be done by a different department within your insurance department offices, if that occurs?

A It would be other people. I wouldn't be- - I'm not in that department. I'm not in that division.

Q Would that be in the compliance and enforcement division?

A That is correct.

Q And does this division, within the jurisdiction that you talked about, do they have authority to levy forfeitures?

A They do.

Q And does that authority proceed up to the authority to even restrict the ability to do business in the state of Utah?

A It extends — The authority extends to seizing the company and liquidating it.

Q Based upon this objection, Mr. Ovard, what is your belief about, from your experience, from what you've read and people that you've talked to, what is your belief about whether there's a pattern or practice?

Vol. R. 10282-33

* * *

A There's been absolutely no evidence of any pattern of, that you've suggested.

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Vol. R. 10282-35

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CROSS EXAMINATION BY MR. HUMPHERYS

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Vol. R. 10282-75

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Q All right. And have you ever disciplined State Farm for anything?

A Have we ever? They have had no docketed actions by complaints, and enforcement, which means they haven't been disciplined by them. There have been numerous occasions where I have taken exception with what they've done, and have had numerous disagreements

Vol. R. 10282-76

with them, as I do with all companies. I argue with all companies almost on a daily basis.

Q But you've taken no disciplinary actions against State Farm; isn't that right?

A They haven't had any violations that would merit that, that we know of.

Q That you're aware of.

A Sure.

* * *

Vol. R. 10282-79

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Q I want to try and get through, if that's all right. It's improper to have incentive programs, isn't it, to try and pay less?

A No, I believe that's a violation of law.

* * *

Vol. R. 10282-80

Q Are you aware of the PP&R program?

A You've mentioned that before, and specifically I'm not.

Q You've not read any of the manuals, have you?

A State Farm manuals? I don't believe I have.

Q And yet you would be in a position better than anyone else in the state to know whether there are violations occurring at State Farm; is that right?

A I would think so.

Vol. R. 10282-152

* * *

DAN COCHRAN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q And who are you employed by?

A I'm employed by State Farm Mutual Automobile

Vol. R. 10282-153

Insurance Companies.

Q And what is your title with State Farm?

A My title at State Farm is corporate records administrator, I am responsible for overseeing the company-wide records management program.

* * *

Q Now, in 1983 when you became the records administrator of State Farm, can you just briefly tell the jury who you administrate over, or what your position is with respect to the various regions? The

Vol. R. 10282-154

jury's heard evidence that State Farm is divided into some twenty-eight regions. And can you tell them who you work with, basically, in your job?

A That's correct, State Farm does have twenty-eight regional offices, along with our corporate headquarters in Bloomington, Illinois. I work through a group of records coordinators who have the responsibility of coordinating the program with me on a company-wide basis. We have one coordinator per regional office that we work with. We also have coordinators representing each major department back at our corporate headquarters.

Q So is there a records coordinator in the Mountain States Region?

A Yes, we do have a records coordinator in the Mountain States regional office.

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Vol. R. 10282-179

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CROSS EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10282-186

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Q Okay. Cover a couple of other things with you. What is image, or optical imaging, or electronic imaging?

A I'm not an expert in electronic imaging. Through my association with the international association, ARMA, Association of Records Managers and Administrators, I'm aware that that is basically a data

Vol. R. 10282-187

capture, or a way to take paper documents and put them onto an optical disk for storage.

Q Right. And you can store hundreds or millions of documents in very small amounts of disk space, can't you?

A Disks fit into a juke box which comprise a large computer system. On one individual disk you can maintain several documents, and then you also have the process of scanning those documents into the system, maintaining those documents, migrating them from system to system over the years, and substantial costs associated with those storage devices, yes.

Q Isn't it true that in the minutes to your meetings you instigated an electronic imaging and storing program, as well?

A I did not instigate —

Q State Farm, excuse me?

A State Farm is in the process of storing policy holder records on optical disk. For years we have used microfilm technology to store those policy holder records. I have supervised one of those units in the past. And now we are moving to optical disks to be able to store some of those records.

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Vol. R. 10282-196

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CROSS EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Cochran, you indicated that you could get several documents on a disk. Do you remember using the term "several documents"?

A Yes, I said I could.

Q You can get 100,000 pages on one four-inch disk, can't you?

A I don't know that you can get 100,000 pages. I know that it is —

Q On a fourteen-inch disk, isn't —

A I know you can get tens of thousands, because I know we have diskettes that have tens to twenties.

Q Is that how you define several, is tens of thousands?

A I was not asked to define several.

Vol. R. 10282-197

Q And you can get tens of thousand of pages on one microfilm, can't you?

A My experience, as the supervisor of a micrographics unit, on a standard Kodak reel of microfilm will range anywhere from 5,000, up to maybe 7,000 documents, eight and a half by eleven on a single roll of microfilm.

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Vol. R. 10283-4
SALT LAKE CITY, UTAH; JULY 23, 1996; A.M. SESSION

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Vol. R. 10283-28

* * *

ROBERT F. WILLIAMS called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q Mr. Williams, I'd like to briefly go over your background, and I'd kind of like to start at the present, and then we'll jump back and work to the present again. Are you currently employed?

A Yes, I am currently president of Cohassett Associates, a management consulting firm based in Chicago, that specializes in document-based information
Vol. R. 10283-29
management, records management.

* * *

Vol. R. 10283-30

Q Now, going forward to the present time, in terms of records management, you're appearing here today as what this jury has heard from others as an expert witness; is that your understanding?

A That is my understanding. I'm here as an expert witness.

* * *

Q Now, could you tell the jury what records management is, and what you do as a consultant, and then after we go through this area I'm going to talk briefly about some of the companies that you've worked for that the jury may be familiar with, both locally and abroad. So what is records management?

A Records management is the orderly preservation of information. Information, like energy, in our society, is really the essence of how we conduct our daily activities. And records are the evidence of those activities. They're created in a broad spectrum
Vol. R. 10283-31

of different ways, from personal driver's licenses to engineering drawings, to computer output.

And this evidence is needed in American business, these records are needed in American business, because of the large volume of information that is involved in transacting business. We have a need to have a corporate memory.

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Vol. R. 10283-66
CROSS EXAMINATION BY MR. CHRISTENSEN:

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Vol. R. 10283-71

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Q (BY MR. CHRISTENSEN) All right, let me frame it as my understanding. My understanding is the issue relating to document retention and document destruction in this case, Mr. Williams, is not to try to look at State Farm's document management program and to whether there may be a better one out there. It's to determine and consider whether there's been concealment, misrepresentation, destruction, and withholding of evidence in this case.

Now, is that consistent with the understanding you had as you formed your opinions?

A My opinions were to present the profession of records management and its consensus of what records management should be. And to measure that consensus against the specifics of State Farm. That I have tried to do.

Q But not relating to this case.

A My opinion was asked relative to this case, and I am here today because of this case. But the view
Vol. R. 10283-72
that I have been asked to present is a big picture view of the overall quality of State Farm's records management program vis-a-vis the profession of records management.

Q So you're here to talk about records management program, not concealment or destruction of evidence.

A That is correct. I'm here to talk about the program, not the concealment of any evidence.

Q Do you know whether that's occurred in this

case?

A I have no understanding on that matter whatsoever.

* * *

Vol. R. 10283-80

Q (BY MR. CHRISTENSEN) All right, well let me ask you this. Do you agree that it's very important to understand that a successful quality records management program does not address the issue of the content of the documents? In other words, the program should not get rid of documents that are unfavorable to the company, and keep those that are favorable? Would you agree with that?

A From the records manager's perspective, records are retained on the basis of their category, their title. And therefore there is no judgment made with respect to the content. When a records manager is notified that a case is pending, or there's a discovery order, it is the law department who then makes the judgment with respect to the content, and defines what records within the records management program, based on their content, would be relevant for that case.

So it's important for us to distinguish between the records manager's responsibility and the parties in the case, the attorneys. The attorneys would be speaking to the content, the records manager would be speaking to the form of the record, the category of the record.

Q Okay. I think you misunderstood my question. I'm not talking about attorneys.

Vol. R. 10283-81

A All right.

Q I'm simply talking about a record management program. It's not proper to try to design a program so that the evidence that's favorable to a company is preserved, and the evidence that's unfavorable is discarded. Do you agree with that concept?

A That concept of discarding unfavorable evidence, because you anticipated it to be unfavorable, or knew it was unfavorable, would be totally in contradiction to any quality records management program.

Q A records management program ought to reflect

the truth?

A Records management ought to reflect the facts as they are contained in the documents.

Q And it would not be a proper records management program, would it, for a company to destroy old documents that revealed that it was doing some things that it shouldn't be doing, and then replace them with new, self-serving documents to try to create a misimpression. That wouldn't be proper, would it?

A To replace old documents with new documents after the fact is totally abhorrent to any quality records management program, and any professional practices by records managers.

Q Or any program that would slant the truth is

Vol. R. 10283-82

improper, isn't it?

A I'm not sure I understand the full question, there, sir.

Q Designing a record management program, if someone went back and looked at documents later and tried to figure out what really happened, they'd get a distorted picture, that wouldn't be proper, would it?

A If they got a distorted picture it wouldn't be proper?

Q If the program, if someone attempted to design one to accomplish that, that wouldn't be proper, would it?

A Oh, absolutely not. The program should not have that as an objective, or permit it as an exception, or anything that occurs within the framework of the program.

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Vol. R. 10283-103

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Q Now, I think in your deposition you said that on an optical disk, a fourteen-inch optical disk- - Does that look like a disk like you could rent to watch a movie on? Have the same kind of appearance?

A The outward appearance is somewhat similar. There are smaller ones analogous in size to what you use for your CD and audio.

Q A 14-inch disk you could keep 100,000 pages?
Vol. R. 10283-104
A There are certainly 14-inch disks where at least that much, in the way of document-based information, could be contained.
Q So you could probably keep every claims manual State Farm has ever had on one disk. Keep it there in the legal department, so it's available when information is requested in lawsuits, couldn't you?
A There is no question that the capacity of optical media would permit State Farm now to put all their records on optical media.

* * *

Q And State Farm has had a microfilming program for many, many years, haven't they?
A They have had a very extensive one.
Q And you can get, what, between five and
Vol. R. 10283-105
10,000 pages on one roll of microfilm that's about this big?
A It is possible to get that many. If you're dealing with eight-and-a-half-by-eleven documents, we speak of those being reduced at a 24-X reduction in order to retain clarity, and that would bring it down to more like 2,500 documents. If you're talking about checks, which are much smaller in size, you can get more, and you also can use things like thin-base films and others that can bring you much closer to that 10,000 figure that you spoke of. Possible, but for the regular documents that we're talking about, you're speaking more in terms of 2,500.
Q But you could get every claims manual State Farm has ever had, if you used microfilm, easily in a desk drawer of corporate legal counsel, couldn't you?
A Well, frankly, I'm not privy to how many manuals they've had in all of their different varieties of business. I think I prefer to answer that, instead of saying yes, you could have all of them, you could get a lot in there.
Q Okay, many, many thousands of pages.
A Yes.

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Vol. R. 10284-4
SALT LAKE CITY, UTAH; JULY 25, 1996; A.M. SESSION

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Vol. R. 10284-6
JERRY L. STEVENSON called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION BY MR. BELNAP:

* * *

Vol. R. 10284-7

* * *

Q Who do you work for?
A For State Farm Insurance.
Q And when did you start working for State Farm?
A I started in June of 1964.
Q And you've been working continuously since then?
A I have.
Q What office do you currently work in?
A In Centerville, Utah.

* * *

Q And Mr. Stevenson, in 1983, February, were you given a transfer from the Salt Lake office to the
Vol. R. 10284-8
Ogden office?
A Yes.
Q Now, in Salt Lake, were you acting as a claim superintendent?
A I was.
Q And then transferred to Ogden in what position in February of '83?
A February 28th of 1983, I transferred to the same position as claim superintendent in the Ogden office.
Q Now, we know, from being involved in this case, that the Campbell case was one of the cases pending in the Ogden office at the time you took over in February of 1983; is that correct?
A That's correct.

* * *

Vol. R. 10284-19

* * *

Q All right. During the course of your handling of this case and working on it, Mr. Stevenson, did you ever, as you approached this case and attempted to make decisions based on the information you had from your experience, did you ever intend to make decisions in a way that would harm Mr. Campbell?

A That wouldn't be intent with any policy holder, to harm them. In this case there was never any intention to harm or injure Mr. Campbell in any manner, to provide for him good protection in the policy that he'd purchased, and that was my goal with him, as well as all the other policy holders that I work in behalf of.

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Vol. R. 10284-26

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Q Mr. Stevenson, understanding the judgments,

Vol. R. 10284-27

that you've explained to the jury, that you made, and understanding the result of the trial in Logan where the jury disagreed with the assessment that you had made based on the facts, do you understand, one way or the other, whether or not, based upon that decision, whether a mistake or an error in judgment was made, based upon their view versus yours?

A Well, I can look back at it today and say- - I don't like to say that it's a mistake, Mr. Belnap, but I accept the fact that that's what the jury decided. As I look back at it today, I can recognize and see that.

At the time the decision was made, and perhaps even when that verdict from the jury came in, I felt very strongly, and I still feel very strongly today, on the evidence that was there. But I'll say that living to the years that I have, I've learned that I make mistakes. And if I made a mistake in that, I'll recognize and say, "Sure, I made a mistake."

But I'll tell you again that I used all the best judgment of many years of investigation and training that I had to not make a mistake on that in taking that case to trial. The jury made their decision, and I can accept that.

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Vol. R. 10284-50

* * *

CROSS EXAMINATION BY MR. HUMPHERYS:

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Vol. R. 10284-88

* * *

Q Okay. You acknowledge, don't you, Mr. Stevenson, and I think you did in your deposition, that an excess verdict can be very traumatic on an individual.

A Oh, it would surprise me that there wouldn't be trauma to an excess verdict for any individual.

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Vol. R. 10284-89

* * *

Q Okay, let's look at your deposition, then, on page 121. Here on line 18. "The longer it is, the more traumatic it is for them. You would agree with that?"

And you said, "I would agree."

A I would agree. . . .

* * *

Vol. R. 10284-100

* * *

Q Are you proud of the way that you and State Farm have protected the Campbells in this case?

A I am sorry to any policy holder if there is trauma, or if there's worry or sleepless nights, or concern about a lawsuit or an accident. But I'm proud that we provided for Mr. and Mrs. Campbell, Wendell Bennett, a competent attorney, a good investigation of the accident, listening really closely to a good trooper who had twelve, thirteen years, a fine reconstructionist, I'm proud of those things, yes.

Q And you're proud of the way that you protected the Campbells.

A I'm proud of that.

* * *

Vol. R. 10284-101

Q After all that you've read, have you seen anything improper that was done in the Campbell file at any time?

A Well, I guess if you're asking me hindsight, and I look back, I can say yeah, I wish I'd settled it and done that. But I'll strongly say what I said a few minutes ago, in my heart I know that I went through and gave Campbells every bit of chance and help from my years of experience that I'd had in working on claims and lawsuits, and wanted to provide, and gave that to them as best I could.

Q Let me see if I can ask the question again. In review of the file and the other information you

Vol. R. 10284-102

reviewed, have you seen anything improper that was done in the Campbell file? And if so, I'd like you to describe it.

A I'd have to say I don't see anything improper.

Q Is there anything that was done in the Campbell file that was inconsistent with State Farm's standard policies and procedures as you understood them?

A Investigation, constant evaluation of information coming in, providing — There's nothing. We gave them all.

Q And do you feel that you handled the file appropriately, as well?

A That's one of those that's hard to pat yourself on the back, and I'm not doing that, but I'm saying I'm not ashamed of how I handled the Campbell file. I have no ashamedness of that. Again, I'll say I don't like people to go through sleepless nights and trauma, but I guess that's part of automobile accidents. But I'm proud of what I've done for the Campbells.

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Vol. R. 10284-142

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HAROLD C. YANCEY called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HANNI:

* * *

Vol. R. 10284-152

* * *

Q In 1985, you said you were asked, I think you said you were asked by Governor Bangerter to become the insurance commissioner?

A Yes.

* * *

Q How long did you serve as the Utah insurance commissioner?

A About seven and a half years.

* * *

Vol. R. 10284-185

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Q Mr. Yancey, based on your experience in the insurance industry, your experience in handling claims, your experience as a regulator for seven and a half years, and what you learned about State Farm during the time that you were a regulator, do you have an opinion as to whether or not, here in the state of Utah, there was, State Farm engaged in any kind of a pattern or practice of cheating or deceiving insureds or third-party claimants? Do you have an opinion?

A Yeah, I do.

Q Will you tell us what that opinion is.

A During the seven and a half years that I served as commissioner, none of my staff ever brought to my attention any evidence that there was a pattern and practice on the part of State Farm of deceiving or cheating people on claims. I also, through my own observation, did not find any evidence to that effect.

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Vol. R. 10284-235

(The jury left the courtroom.)

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Vol. R. 10284-241

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MR. BELNAP: Judge, I think I can make this short, because we have a written proffer we would like to provide to you. Is that acceptable?

Vol. R. 10284-242

THE COURT: Sure.

MR. BELNAP: Okay. I don't have that with me today, but we can bring it tomorrow. But this is our view of the reason why we ought to be allowed to call as rebuttal witnesses, witnesses on the subject of Ina DeLong's testimony about the Loma Prieta earthquake, and the fact that she allegedly had documents proving that State Farm had cheated homeowners out of $175 million in that earthquake situation.

Now, Mr. Crandall had asked her on cross examination a number of questions about why she left State Farm, had she had a relationship with a contractor, had they breached ethical obligations of State Farm, had she accepted gifts from him, had she ridden in his truck to various jobs involving that earthquake, and he did ask her those questions.

But we do not believe that opened the door to allowing her to testify about how State Farm allegedly cheated. But Mr. Christensen held in his hand a report that thick, and had her identify if, in that report, as he waved it to the jury, if there was evidence that State Farm had cheated $175 million worth out of policy holders.

Now, the fact of the matter is, Mr. Hernandez from the California State Insurance Department received

Vol. R. 10284-243

that report from Ina DeLong, and an investigation was done, and he found, and the department found that to be without merit. That would be the witness that we would like to call on that small, isolated issue.

We would also like to call a Mr. Gordon, who was her divisional claims superintendent down there, who will

support that same issue, that those allegations were not founded.

THE COURT: Now, is this new? I've never heard of Gordon before.

MR. BELNAP: I mentioned Gordon last week. I had mentioned Hernandez before, Your Honor.

MR. CHRISTENSEN: I don't recall Gordon either.

MR. HUMPHERYS: I don't either.

MR. BELNAP: Last week, or Tuesday, I mentioned Gordon. He is the divisional claims superintendent that was involved in those same stack of allegations. And we would like to proffer him. We believe this testimony could be handled in less than a half of a day, probably two hours, on that very limited area for direct and cross. And I would move to be able to do that, and I think it's proper rebuttal to Ms. DeLong's statement about the $175 million.

THE COURT: Okay.

Vol. R. 10284-244

MR. CHRISTENSEN: I remember how that testimony came out a little differently. I'll acknowledge it's been quite a few weeks ago. But as I recall, Mr. Crandall, the California attorney, had a very aggressive attack on Ms. DeLong as his cross examination approached, and several times kept asking her, "Isn't it true you left State Farm so you could become a $200-an-hour witness? You could get your $200 an hour fee testifying, and isn't it true that's why you really left State Farm?" Over and over again, among other things.

He also, in trying to impeach her, used fire company documents, depositions, at least one, I think, from a fire case, and so forth. We had stayed out of the issue because of the court's prior instructions. He not only opened the door, he opened a flood gate with the attack he did on this witness. And it seemed completely fair to me, and the court so ruled, that she was entitled to explain why she did leave State Farm after that kind of cross, which she did.

We didn't put those documents into evidence. State Farm has deposed Ms. DeLong a number of times, she's produced those very documents numerous times. Mr.

Crandall and State Farm knows Ms. DeLong and her testimony better than we do.

Vol. R. 10284-245

And here we are, for the case to about conclude, and they want to interject new witnesses. The court knows it's our view that there's already been too much interjecting of witnesses into this case by the defendant. I was deposing witnesses on Sunday a few days ago that they were allowed to put in. If they say they could do this in short order, that's not fair.

We've had no discovery on it, no opportunity to come up with our own witnesses. I am confident, based on everything else we've seen in this case, that if we had the opportunity to do discovery, to have State Farm produce its files on the earthquakes, the PP&Rs of the people involved, and get to the bottom of this whole thing, we would find plenty of evidence corroborating Ms. DeLong.

I think she also testified that going to the media with this information forced State Farm to reopen the files on many cases. And I don't know what their proffered evidence is, but one explanation could easily be, if there wasn't anything done about it, it's because State Farm's hand was forced, and they were forced to go do it anyway. If they're going to have witnesses, we need discovery, we would need our own California people.

Tomorrow the evidence ends. I don't think it's fair to interject this in later, especially right

Vol. R. 10284-246

here at the end of the trial, and especially after our experts have all testified.

MR. BELNAP: Your Honor, may I just, so to speak, have the last word?

THE COURT: You may.

MR. BELNAP: Judge, I will check what I told Your Honor on Tuesday, and I'll live by that in terms — But I thought I did mention Gordon. I mentioned Hernandez the week before, but if I didn't, I'm sorry.

But nevertheless, Ms. DeLong, if not directly, certainly in several of her answers, indicated that, to the contrary of what Mr. Hernandez would testify to, that

this was kind of an open-and-shut situation of wrongdoing, and that it was determined it was wrongdoing, and an independent person with that department in California looked at it, and investigated it, and it was determined that her position was not factual. And I'll submit it.

MR. CHRISTENSEN: Your Honor, one other thing. I think — and again, this is several-week-old memory — but I think Mr. Crandall asked her about that on cross.

THE COURT: I'm going to deny the motion. My reasons are as indicated by the plaintiffs. I think it's well to note that it's very late in this case to be

Vol. R. 10284-247

bringing up new witnesses. Ina DeLong is well known to the defendants, and it seems to me that they could well have anticipated this, particularly could have anticipated it, since Mr. Crandall's the one that opened the door and brought up the fire cases after the court made some effort to limit at least the substantive use of fire cases.

That issue was, of course, a difficult one through the trial, because there were relationships between the fire and the auto companies. But notwithstanding that, I remember making a clear point to Mr. Crandall that he was opening doors when he launched his very aggressive cross examination into the fire area, and it seems to me that for him to invite that kind of an enlargement of the case, knowing full well more about Ina DeLong than anybody in the courtroom, from his prior experience with her, and then to use that as a basis to bring in two new witnesses after the plaintiffs have closed their case, and virtually defendants have closed its case, seems to me to be utterly unfair and extraordinarily additional burden on the jury, that has now sat through almost two months.

The court had some hopes of limiting this case, and is not casting any fault any direction on its inability to do that, other than the fact that it has

Vol. R. 10284-248

happened. I'm somewhat saddened by the fact that it's taken us so long to complete the case, but I'm also, we did tell the jury two months, but I didn't tell them any

more than two months. And I think to add an additional burden in this case would be unfair to the jury, to say nothing of what burden this new evidence would present to the plaintiffs to now do further discovery and then seek further examination.

And so with those highlights, the court will receive the defendant's proffer, but is ruling and denying the motion.

MR. BELNAP: Your Honor, can we — Given the totality of the situation, that there was not — and I've reviewed the transcript, there was not questions into the merits of the dollars until after she raised it — I would like to ask for a restriction on closing statements on referring to that dollar figure in closing arguments.

THE COURT: I don't have a problem with that. Do you have any intention of using those numbers in closing?

MR. CHRISTENSEN: I don't know. We haven't really thought about that.

THE COURT: Well, I don't think any reference should be made to anything she had to say about

earthquake damages unless it's — You get the last shot. If that door is opened by the defendants, I think you ought to come up and raise that with the court for your final argument. But —

MR. CHRISTENSEN: Well, I think we have to —

MR. BELNAP: If we do, would you take your gun out and shoot me, Your Honor?

THE COURT: I don't think I'll have to. I think you've got a room full of folks that —

MR. CHRISTENSEN: Well, we ought to have this much latitude. Obviously they're going to be attacking the credibility of our witnesses in closing, and —

MR. BELNAP: Why don't you wait and see? Maybe we'll agree with everything you said.

MR. CHRISTENSEN: If they'll stipulate everything Ina said was true, I will not touch it.

THE COURT: I'm going to allow full argument, but I think that area, of those numbers, that's, I think that's a no-no, unless there's direct provocation from the —

MR. CHRISTENSEN: We'll stay out of the numbers unless they open it, but I would at least like to be able to say something like, "She left because she felt that she needed to, to correct an injustice," or to deal with one, or something like that.

THE COURT: I don't have a problem with correcting an injustice. But that's different.

MR. CHRISTENSEN: How about a $175 million injustice?

THE COURT: I think I'd have a problem with that.

MR. CHRISTENSEN: All right.

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Vol. R. 10285-4
SALT LAKE CITY, UTAH; JULY 26, 1996; A.M. SESSION

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Vol. R. 10285-7

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MR. CHRISTENSEN: . . . I got a call from Mr. Belnap last night indicating that they now want to have Mike Arnold, their last witness, discuss class actions against State Farm. He had indicated, he left a voice mail the evening before, which would have been the evening of the 24th of July, on Mr. Humpherys' voice mail. I had Mr. Humpherys check that, and it was there. It was just after 8:00 o'clock on the 24th.

MR. BELNAP: And Roger, Rich and I had talked the evening of the 24th up until about almost 6:30 or —

MR. CHRISTENSEN: Yeah, I think he only left a few minutes before. Anyway, so the practical effect

Vol. R. 10285-8
was, we were informed last night. They want to get into class actions with Mr. Arnold, who has not been designated for that. We've not been allowed to get into the substance of class actions, simply to use them to bring up that they exist, and that these witnesses didn't know about them.

We would love to have put on some of the attorneys that handled those, or some consumer advocates, or some people to get into the merits of those and have them explain to the jury the different things State Farm is doing. And we were limited in our ability to do that. We've honored that.

To now have them, at the last minute, put on a witness, where we've had no discovery, I understand there's an attorney at State Farm — and I simply know this through hearsay — there's an attorney at State Farm that's over the class actions. And I'm sure there are a number more than we've discovered. We would love some discovery there.

But that's come up at the last minute, as well, again, with a witness not designated on it, and going beyond the scope. I think whatever is done with this article that

is before the court right now ought to be viewed in the context of what's going to happen with Mr. Arnold later this morning, as well.

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Vol. R. 10285-12

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THE COURT: What is it you want to do with him on class actions, counsel?

MR. BELNAP: Your Honor, obviously we did not raise the class action issue in this case. Mr. Christensen did. Mr. Arnold has personal knowledge of some of the cases that Mr. Christensen referred to, and has, was working in the state of California when the Krinsk case was being handled, and has personal knowledge of that, and —

THE COURT: Is Krinsk the parts case?

MR. BELNAP: Yes. And he was a property damage superintendent in California when that case and the Krusinski case and some of the other ones were being handled, and has personal knowledge.

And frankly, the record has been grossly misstated on that point. And we hadn't anticipated ever

Vol. R. 10285-13
needing a witness to get into those areas, anticipating, no way to anticipate that they'd be an issue, number one, number two, that the record would be misstated, which it —

THE COURT: What's he going to say?

MR. BELNAP: Well, Mr. Christensen represented in his questions to both Mr. Reynolds and Mr. Rogers, that, "You certainly can't know what you're doing, because 2 million people down in the state of California have been cheated." And that is absolutely untrue, Your Honor.

There are, there were 3,000, about 3,000 people that ended up making a claim in the Krinsk case. And of those, approximately 1,000, under the court rule set up in the settlement, were disallowed. And they've paid out a total of $77,000 in that case to resolve the some 2,000 people that said that they didn't like their after-market parts, and they sent out guarantees to another 1,000.

And Mr. Arnold has personal knowledge of that, the same with Krusinski. It was represented to Mr. Rogers, "Well, you can't know what's going on, because 80,000 people in your state have been cheated on after-market parts."

And in that case, 2,000 people made a claim,

Vol. R. 10285-14

and less than that have been found valid, and there's been $80,000, $87,000 paid out, and that case is over and done. There were 700 guarantees sent out to people, and only 300 and some-odd redeemed them during the time period that the court allowed.

And so I've got to have an opportunity to meet those things when, with two witnesses, and on five occasions it was stated there's millions of people that have been cheated in California, Illinois, and elsewhere. And he has personal knowledge of that.

We couldn't anticipate it at the time he was deposed.

THE COURT: Okay, Mr. Christensen?

MR. CHRISTENSEN: He couldn't possibly have personal knowledge. This is something that State Farm is simply going to have him relate second-hand info. I was relying on, for example, Illinois, Your Honor, the best evidence that I had. As you'll recall I used a Chicago Tribune article that said 80,000 people. He admitted he took the Chicago Tribune. Here's the article. It says, "The company said up to 80,000 policy holders could be covered under the terms of this settlement."

And I've got a — I did not use this article on the screen, but I had a good faith basis for asking

Vol. R. 10285-15

the questions on the California settlement. I had more than one newspaper article that mentioned the figures of 2 million and 2.3 million. And I just had that in my hand. Let me find it again.

I am absolutely sure that if we were allowed to get into the substance of these cases, and put — Here's my article from the LA Times, if I could approach the bench. From October of '95, that State Farm has agreed to settle.

Alleging the company cheated more than 2 million California customers by using inferior parts to repair their cars. Under the terms of the settlement, "Under the settlement announced Monday, about 2.3 million customers with policies between February 1, '87, and September 25, are eligible for car repairs, or for $35 each." So there is a good faith basis for the questions.

As the court will recall, as requested by counsel, I was very limited in what I could do. It was mainly just provide enough information to confirm that the witness didn't know that this was going on, and that's all we did.

If they're going to be allowed to get into the merits of this thing, we should have been given some discovery. For them to now say that they didn't know

Vol. R. 10285-16

until yesterday or day before yesterday about this can't possibly be true. This came up weeks ago. And if they want to get into the substance, then we ought to be free to designate some rebuttal witnesses who have personal knowledge, can get into the substance, and have some discovery, as well.

The other thing, Your Honor, is on their motion we were required to do our rebuttal before we concluded our case. And we agreed to do so on the condition they wouldn't change their testimonies. And with the understanding that we would have to present that evidence in that form, which we did.

They now want to change the rules on that, on the last day of the evidence. And it's not fair to do that. Mr. Prater, as you may recall, I think with the class actions, simply had my big book, and largely just read the names of the different states where there were some pending. We haven't been allowed to get into the merits, and I think it's not fair for them to, on the last day of trial, on essentially no notice.

Oh, and I've got another concern, as well. While Mr. Arnold also —

MR. BELNAP: Can I speak to that one also?

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Vol. R. 10285-17

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MR. BELNAP: Let me speak to each of those. . . . And we sent to counsel, this has been over a month ago, a designation that Mr. Arnold would be covering those areas that we set forth in our disclosure

Vol. R. 10285-18

to the court, that Mr. Arnold would be covering those areas. And so at the last minute, here, we now have an objection on this, and this has totally been out on the table, Your Honor, within the time periods. And the exhibits that we're putting in have been produced and disclosed, and it's not by any means a late situation. So I see that as a red herring.

With respect to the issue of these class action cases, Mr. Christensen, just as an example, said, "Do you know how many people were affected in this California lawsuit?"

Answer. "No."

This is from is the testimony of Mr. Rogers, and similarly to Mr. Reynolds.

"Would it surprise you if I told you it was over 2 million?"

And then he goes on to say, "We just looked at a class action where State Farm has agreed to pay millions of people, haven't we?" Referring to the California case.

And I'm not going to impugn Mr. Christensen's character, I don't intend to do this in making this statement. But if there's an allegation there was a good faith basis to rely on a hearsay account from a newspaper, the facts are a matter of court record as to

Vol. R. 10285-19

what has taken place.

We've researched it since that took place approximately a week ago, and we have the information, Mr. Arnold has personal knowledge on that, and he's confirmed his knowledge with State Farm that handled the case from their corporate department, that the allegations that have been made are incorrect.

The plaintiffs in their complaint allege that there were 2.3 million people that were involved. Well, what they did is they just took some statistics as to the number of property damage claims that had been

handled in that time period in the state of California, and tried to extrapolate on those statistics.

The fact of the matter is, the court, in the California litigation, had State Farm, as they looked at the records, had State Farm send out 45,000 letters based upon what they could determine were people that had received after-market parts. With those letters went a claim application saying, "If you're dissatisfied in any way with those parts, here's a claim application which you need to file by a certain date."

The court also required State Farm to publish in four different newspapers on two consecutive running weeks a 1-800 number and a statement, "If you're out there and you're dissatisfied with any of your car

Vol. R. 10285-20

repairs, call this number, and you can make a claim by a certain date."

Having done that, there were then less than 2,000 people that the court found fell into the category that had after-market parts, and they've paid out $77,000, and sent out guarantees to some of the other people that didn't want repairs, just wanted to make sure that the repairs they had were guaranteed.

And if we're not allowed to meet those issues, Judge, we have on the record a statement that we have screwed and cheated millions of people. And it's not correct. And that's all we want to do, is set the record straight on that, and have the opportunity, which we had no way of anticipating or disclosing until that was brought up less than a week ago with those two regulators' testimony.

MR. CHRISTENSEN: Well, let me respond to that. They say they want to set the record straight. Repeatedly in this case State Farm makes self-serving representations through witnesses who aren't knowledgeable, and I can guarantee you Mr. Arnold didn't handle those class actions. And when we get discovery and we get files and we get specifics, it's not what was represented.

And they, on the last day of trial, now, want

Vol. R. 10285-21

to make some self-serving representations that are contrary to the information I have, without any opportunity for us to find out if they're really true.

Again, the issue, there, Your Honor- - And they've put on multiple regulators, and they were designated late in the game, and we did the best we could to try to come up with a way to deal with that. The issue was awareness. Mr. Hanni elicited from these people testimony, and as I recall Mr. Reynolds, it was laid on pretty thick.

"If anybody would know if they're out there doing anything, I would. That was my job," et cetera, et cetera. And the court allowed me to get into it simply from an awareness issue.

And I had a good faith basis from the Times article that there were over 2 million people involved, and I think the figure I read was, what, $35 a piece? Well, that's millions of dollars. We haven't had the chance to do discovery on all these class actions.

I would love to have State Farm produce the information on those so we could get into those. We could put on witnesses. But this was limited to my being able to show that these people that claimed if anything bad was going on, they'd be the first to know, didn't know, and it was right in the public newspapers,

Vol. R. 10285-22

and it was right in the public records.

And we can probably deal with this, Mr. Humpherys suggests, with a jury instruction. I don't think it's fair now, to spring this on us, just on the last day of trial, and not give us the opportunity to rebut it, particularly with a witness who obviously has simply been prepped on second-hand to say what State Farm wants said.

* * *

MR. BELNAP: They filed a motion in limine on this, Your Honor. And you ruled.

MR. CHRISTENSEN: The court ruled you could use the exhibits, but I don't think the court ruled you could pick any witness you wanted, with no discovery, and say anything you wanted.

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Vol. R. 10285-23

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MR. BELNAP: I do have one thing I'd like to say, very quickly, on the cases. When it said there's no discovery, there was an order in this case that cases be disclosed by a certain date. These class actions came beyond that time period. Now, so be it.

Mr. Prater talked about them, and they've been allowed to be talked about. But when you go into the merits, Your Honor, we have to be able to take this factually. To say that we're going to put up some self-serving information, I'll stand on the record, here, and say the information I have found is actually correct.

And if we can't have an opportunity, when this is a matter of public record that they themselves, if they chose to use the case, could have checked out, then we're sorely prejudiced, Your Honor.

THE COURT: Well, I'm also going to allow you to put on Arnold with respect to — I think, again, we're talking about the plain vanilla facts, and not a lot of anything more than what you're prepared to state as essentially matters of public record that could have

Vol. R. 10285-24

been discovered if they had sought out more information. It seems to me that that's fair and reasonable. Certainly the awareness point is still there, as I read it, because if there's an allegation of 2.3 million people cheated, and the insurance commissioners don't know anything about it, well, whatever point Mr. Christensen wants to make I think still stands.

But I think that you should be given a chance to say, "This is what really happened. This was the outcome." So I'll allow that. But again, I think we should be mindful of the fact that this is not the time to be introducing anything new, or trying to tie down the loose ends, get the matters that have been —

I'm allowing it because I think it does give State Farm a chance to get some closure to an issue that has been raised without the whole story being told, and I think it's fair to do that.

But I want to impress on you that I want it to be a very limited bit of testimony on the subject, and it seems to me that that's where it should stand.

And as far as the PR, also be mindful the court's ruling on that, because I don't want to open up some new areas that we're going to have to address later on through plaintiffs' desire for further rebuttal on that.

* * *

Vol. R. 10285-25

* * *

HAROLD C. YANCEY the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Vol. R. 10285-55

* * *

Q Now, in your tenure, Mr. Yancey, your entire seven and a half years at the state insurance commission, you not only failed to discover any pattern or practice of unfair claims handling by State Farm, but you didn't find any insurance company whatsoever had displayed a pattern of unfair claims practices, did you?

A That's true. Now, not unfair claim practices. Pattern or practice of cheating insureds, I think, is what the issue is.

Q So you didn't find any company, out of the

Vol. R. 10285-56

1,400 insurance companies doing business in Utah, in your whole tenure, you didn't find one of them had a pattern of unfair claims practices, did you?

A That's not true.

Q Well, let me see what you said in your deposition. Would you turn to page 85 of your second deposition, please.

A Okay. Line?

Q All right, would you look at line 13, please. Do you see the question, "During the time you were commissioner of the state of Utah, did you determine that any insurance company had displayed a pattern of unfair claims practices?"

A The key word there is "pattern." There were companies who violated the Unfair Claims Settlement Practices Act on individual cases. And those were dealt with by the department. But we did not find a company who actually had a pattern of going out and cheating insureds.

Q Not one company out of 1,400.

A No, that's right.

Q Not just cheating, but unfair claims practices. You didn't find a single one.

A Oh, yes, I just testified that there were occasions when the Unfair Claim Settlement Practices Act

Vol. R. 10285-57

was violated.

Q Well, State Farm —

A By companies.

Q State Farm did that, didn't they?

A Yes, they probably did.

Q So you could come into court for any one of those 1,400 companies and testify under oath that you did not find that they had displayed a pattern of unfair claims practices?

A And the key word, there, is "pattern." You have to understand that these companies who are given a license to operate in the state of Utah, or any other state, are bound by an agreement that this is a business of trust. And they don't want to write three or $4 million worth of business in the state and then have their license jerked because of their conduct. So they don't do it, as a pattern and practice.

Q Well, they don't do it that you discovered.

A I did not discover it. Nor did any of my staff.

Q I'm going to put on the screen a newsletter from January, 1989. That's your picture, there?

A That is.

* * *

Vol. R. 10285-58

Q Let me read the underlined part. Is something that you wrote?

A Yes.

Q "In addition, we have legislative concerns and market conduct compliance concerns. There is still too much fraud, dishonesty, and misrepresentation in the marketplace. Consumers have inaccurate perceptions that need to be corrected. Companies have spent too much time worrying about bottom-line profits, rather than servicing their customer properly. Too many

management decisions have been made on the basis of greed, market share, and selfish interests, rather than because they are right, fair, and would contribute to the stability of the industry."

Have I read that right?

A You have.

* * *

Vol. R. 10285-59

* * *

Q Mr. Yancey, are you aware whether the insurance commission has done anything with respect to the Crookston case? Are you familiar with that case?

A I'm not.

Q Are you aware that while you were insurance commissioner, the Utah Supreme Court came out with a decision in Crookston versus Fire Insurance Exchange —

A I believe now I know something about that case.

* * *

Vol. R. 10285-60

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Q The Utah Supreme Court affirmed a trial court finding that Fire Insurance Exchange was guilty of fraud, and there was a significant amount of punitive damages that had been awarded were discussed in that opinion.

Did you look into that, as commissioner?

A No.

Q Where there was a finding of fraud against an insurance company, to see what was going on?

A You have to understand the fundamental bases on which the insurance commissioner's office operates. And once a case is in the judicial system, it's left there. There would be no purpose for us to start to interfere with a case that's in the process of being resolved in the judicial system.

Q What about once that's over?

Vol. R. 10285-61

A Okay, once that's over, then if there is evidence that companies, that a company has mishandled something, or operated on the wrong basis, then of

course the department tries to find out what that is, and tries to take appropriate action.

Now, I think in that case, the case itself solved the problem. I mean the judgment that was rendered against Farmers, obviously they're not going to do that same thing again, because of the size of the verdict.

Q So you just assumed that the court decision and punitive damage award took care of that.

A We did.

Q There was a second opinion in Crookston in '93, where the Supreme Court referred to conduct demonstrating a calculated and calloused attitude toward settling valid claims. Shouldn't that give the insurance commissioner some concerns that people other than the Crookstons had been mistreated?

A What time was that, in 1983? Or 1993?

Q I'm not sure. Do you want me to find it?

A I left the office in January of 1993, so just keep that in mind. I was not there after January.

Q Based on your experience, do you think the next commissioner would have followed up on that?

Vol. R. 10285-62

A He might have.

Q He probably didn't?

A October '93? I had left in January.

Q That was after your time? Let me ask you about another case that you mentioned a few minutes ago. The case of Summers versus State Farm. This came out of the Tenth Circuit Court. That's the federal court that handles cases from Utah and other western states, right?

A That's correct.

Q This was 1988, this decision came out, that's while you were commissioner?

A Yes.

Q I'm now looking at page 703, I've underlined a part. It says, "In early 1986, nearly four years after Summers' discharge, State Farm, when preparing for trial, made a thorough examination of records prepared by Summers and discovered over 150 instances where Summers had falsified records."

And then it goes on. What did you do to investigate

this as insurance commissioner?

A We didn't do anything specifically to investigate the Summers matter, but you also have to remember that State Farm, when they found that kind of evidence, dismissed him, and he was no longer a factor in the marketplace.

Vol. R. 10285-63

Q But you had — Well, yes, he was. He continued as an adjuster — I have no knowledge of that.

Q You never investigated Ray Summers at all, did you?

A No, because there was never any — You know, if somebody wants to be dishonest and they're going to keep this all very secret, and that's what they're doing on a day-to-day basis, we're not going to go out and examine every adjuster's file to find out whether or not he's honest or dishonest.

Q Had you looked into this matter when it — This published opinion came out in 1988 — And by the way, that was the end of that court case, right?

A Yes.

Q You would have found over 2,000 pages of sworn testimony Ray Summers had given of different ways he claimed that he had cheated people during the years he worked at State Farm. You didn't find out about that, did you?

A No. May I just add that, here again, the way the commissioner's office is structured, we're not out as policemen, looking at all of the files of the companies, adjusters, investigations, claims. That's

Vol. R. 10285-64

not our role.

Q And, in fairness, I think that's true. Your staff is limited to do that, too, isn't it?

A Yes.

Q You don't know of any bad faith verdicts against State Farm? Isn't that your deposition testimony?

A I believe at the time of the deposition I was not aware of any. I've been made aware of some in the last few days.

Q But not as insurance commissioner.

A No.

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Vol. R. 10285-69

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Q Doesn't the unfair settlement practices regulation which you were obligated to enforce indicate that, both with respect to first-party and third-party claims, the insurance people are obligated to be fair?

A It says that in the Unfair Claims Settlement Practices Act.

Q It also says insurance is a public trust,

Vol. R. 10285-70

doesn't it?

A It does.

Q Settling an insurance claim is not like selling somebody a used car. Selling cars is not a public trust, is it?

A No.

Q When people buy insurance, they are buying protection and they're buying peace of mind, aren't they?

A Yes.

* * *

Vol. R. 10285-134

MICHAEL J. ARNOLD called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q And who are you employed by, Mr. Arnold?

A I'm employed by State Farm Mutual Automobile Company here in Utah.

Q And this jury has heard a number of witnesses talk about the organization of State Farm, and has heard your title referred to before, but can you tell us what your title is at State Farm?

A My title is a divisional claim superintendent. And what that means is I am responsible

Vol. R. 10285-135

for the auto claims operation from the Salt Lake City metro area down to the Arizona border.

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Vol. R. 10285-156

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Q I want to move to another subject area, Mr. Arnold, and that is, there's been some discussion during the course of this trial about some class action lawsuits. Do you know what a class action lawsuit is?

Vol. R. 10285-157

A Yes, I do.

Q While you were working in the state of California, did you become aware of two particular class action lawsuits that had been filed against State Farm, one in the state of California and one in the state of Illinois?

A Yes, when I was in California I became familiar with both of those cases.

Q Now, why did you become —

MR. CHRISTENSEN: I just want the record to reflect the objection I made earlier to this on the grounds I raised earlier, including the fact we didn't learn he was going to do this until last night.

MR. BELNAP: And this is an area that Your Honor heard argument on, and we didn't know this was going to be raised until the course of the trial, and he's aware

of these cases, and you ruled that we could go into it.

THE COURT: The objection is overruled.

Q (BY MR. BELNAP) Did you — Let me back up. The cases that you became aware of, Mr. Arnold, among others, did they include a case from California and one from Illinois?

A Yes, that's correct.

Q And what's the name of the, the last name of

Vol. R. 10285-158

the case from California that you became aware of?

A The last name of the plaintiff is Krinsk.

Q And that's spelled, for the reporter K-R-I-N-S-K; is that right?

A Yes, that's correct.

Q And the case from Illinois that you became aware of?

A Krusinski.

Q Spelled K-R-U-S-I-N-S-K-I?

A I think so. I'll take your word for the spelling.

Q Okay.

Vol. R. 10285-160

* * *

Q Now, can you just tell us briefly, Mr. Arnold, what was the nature of the allegation that was being brought in the Krinsk case?

A In the Krinsk case —

MR. CHRISTENSEN: Your Honor, I'm going to object again for lack of foundation. This witness has not established he's got any personal knowledge. And we were precluded from getting into the specifics. We could just get into the fact they existed. On those two bases I object.

MR. BELNAP: Your Honor, I'm not going to give a big discourse on the case, but by way of foundation, to have him talk about the facts as they really exist, I just need a very brief explanation.

Vol. R. 10285-161

THE COURT: All right, overruled.

Q (BY MR. BELNAP) What were the basic allegations that Mr. Krinsk brought against State Farm in this case that he then attempted to have turned into

a class action?

A Well, the original complaint that Mr. Krinsk brought was alleging that a term, what we call prevailing competitive price, didn't allow him to have the car fixed at the repair shop where he wished to have it repaired.

Q Did there come a point in time in the case where the allegations were broadened beyond that?

A Yes.

Q And if so, just briefly —

A I don't know the exact date, but the class action was broadened, and that's at the time it became similar to the Krusinski case, and the allegations in that were that the non-original equipment manufacture parts that were being put on some cars were not of like kind and quality, and the second thing was the allegation was that people that were receiving these parts were not being notified initially about those.

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Vol. R. 10285-162

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Q Now, let me represent to you, Mr. Arnold, since you weren't here during the pendency of this trial, I'm putting up on the board, Mr. Christensen, the trial transcript, referring you to page 90 of the trial transcript. Mr. Christensen was asking a witness, "State Farm Insurance have agreed to redo collision repairs back to '87 for California policy holders dissatisfied with repairs made with replacement parts."

Going down to this question that was asked, "Do you know how many people were affected in this California lawsuit?"

Answer. "No."

And then going to page 91, "In the class action?"

"No."

Question. "Any idea?"

"No."

Question. "Would it surprise you if I told you it was over 2 million?"

Now, Mr. Arnold, can you tell this jury how many people ended up making a claim that they were dissatisfied with their after-market parts?

Vol. R. 10285-163

A 2,215.

Q And under the court procedure that is a matter of public record in that case, did the court make a determination as to how many people had received after-market parts who should be notified of the settlement in this case if they're dissatisfied with those parts?

A Yes, it was 45,000.

Q And do you know if State Farm sent out a letter, pursuant to the court direction, with a claim application to those people?

A Yes, a letter was sent with a claim application to those 45,000 people.

Q Now, in addition to that, do you know if the court directed that any other advertisement take place in newspapers in the California, in the state of California?

A Yes, I believe it was on two different occurrences in four of the major newspapers in California, an advertisement was run with this information, advising people how they could make a claim.

Q And do you know if, in addition to having that advertisement, if there was a 1-800 number provided for people to call if they were dissatisfied?

Vol. R. 10285-164

A Yes, that was part of the advertisement.

Q And do you know if the plaintiffs in that case, claiming that there were 2.3 million people that were affected, when they tried, when they initially filed this lawsuit?

A That's my understanding.

Q Now, as a result of the court finding that State Farm should send out 45,000 letters, how many people — and the advertisements with the 1-800 number — could you give me the number, again, of the number that responded and filed a claim that was found to be valid?

A 2,215.

Q Now, under the court settlement that was reached in that case, what was agreed to be paid to those people if their claim was found to be valid?

A There were two parts of the settlement. The people could choose to receive $35 if they felt that the part they received was inadequate, or they could receive a guarantee form from State Farm, where they could take their car in and get that part repaired and then the bill would be sent to us.

Q Now, total payments on that case, Mr. Arnold, have consisted of how much?

A With 2,215 claims, total payments, $87,000.

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Vol. R. 10285-167

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Q Now, in the Krinsk case, in the materials that Mr. Christensen had in his booklet, on page 5 does it indicate that, as part of the settlement — Let me ask you, let me just refer you to the document. On page 5 of the document that Mr. Christensen had, can you tell us whether or not it addresses whether there's been any finding or determination that State Farm has been dishonest, or has dealt improperly with anyone?

MR. CHRISTENSEN: Is this the California case?

MR. BELNAP: Yes.

MR. CHRISTENSEN: Well, I object to this. It's misleading. It was settled. There wasn't a

Vol. R. 10285-168

finding. It settled.

MR. BELNAP: You had implied to the contrary with the witness, counsel.

Q (BY MR. BELNAP) Is there any finding in here where it indicates that State Farm has been dishonest or has cheated anyone?

A No, there's not.

Q I want to refer you to page 7 of the agreement. Does the agreement provide, with the authority of the court, that State Farm is entitled to continue to use after-market parts as a continuing repair option with vehicles?

A Yes, it does.

Q I want to talk to you about one other case. I won't take the time to go into the other ones that were talked about, other than this one other, and that's the

Krusinski case. Can you just tell the jury briefly what that case was about, Mr. Arnold?

A That case was about the same issue that came up in the Krinsk case, later on, and that issue was that the after-market parts that were received in the Krusinski claim were not of like kind and quality, and that the notification was not being given to the people that were receiving those parts.

Q Now, let me represent to you — And

Vol. R. 10285-169

Mr. Christensen asked the following question on page 86 of the transcript. "And so, in spite of the fact that there was a court settlement indicating that 80,000 people —"

And what state is this from?

A The Krusinski case.

Q Yes?

A This is from the state of Illinois.

Q "So in spite of the fact that there was a court settlement indicating that 80,000 people had been mistreated by State Farm, you didn't investigate."

Now, Mr. Arnold, can you tell us, from the Krusinski case, if there was any finding that State Farm had mistreated anyone, much less 80,000 people?

A No, there was not.

Q From the Krusinski case, Mr. Arnold.

* * *

Q (BY MR. BELNAP) From the Krusinski case, Mr. Arnold, can you tell this jury, as a matter of public record, whether State Farm sent out letters to people in the state of Illinois with claim forms, saying, "If you're dissatisfied with your repairs, you can bring them in and make a claim"?

A Yes, we did. We sent out 80,000 forms,

Vol. R. 10285-170

80,000 letters initially, and on those 80,000 letters we followed up with 60,000 claim forms to that same group of 80,000 people.

Q Now, in addition to sending out those letters and those claim forms, Mr. Arnold, did State Farm put publications in Illinois newspapers about this matter?

A Yes, four different Illinois newspapers.

Q And in response to those newspaper articles, and the letters that were sent out, can you tell us how many people came in and asked to have their cars looked at for any dissatisfaction?

A Well, the 80,000 letters we sent out, we had 1,301 responses for valid claims.

Q And of those people, did they have the option to receive $40 or a guarantee on their car?

A That's correct.

Q How much did State Farm end up paying to those people under the Krusinski case?

A Of the 80,000 letters we sent out, we ended up paying a total of $77,525.

Q Now, I think you may have interposed that with the Krinsk case, Mr. Arnold. I think Krusinski was eighty-seven and the Krinsk was seventy-seven, but I don't want to debate the point.

A That could be, I have a lot of things in my

Vol. R. 10285-171

head.

Q Nevertheless, Mr. Arnold, was there any finding in the Krusinski case of State Farm dealing improperly with their insureds?

A No, there was no finding in that case, either.

Q And so when it was indicated by a question that 80,000 people had been mistreated from the Krusinski case, is that a correct statement?

A No, it's not.

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Vol. R. 10285-172

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Q I want to move to a different subject area, Mr. Arnold. Were you asked, in this case, to make a determination as to how many verdicts in excess of the policy limits had occurred on a State Farm Auto, or a State Farm policy here in the state of Utah?

A Yes, I was. As part of this case, we needed to determine the number of excess verdicts on third-party cases that had occurred in the state of Utah between 1978 and 1995.

Q Tell the jury what you did to find out about that, Mr. Arnold. Because it's been represented by plaintiffs in this case that you simply made a few calls. Can you tell us what you did?

A Well, it was significantly more than making a few phone calls and checking around. What I did was a two-prong approach. Number one, I called our personnel department and got the name of every single management person that was in Utah, or responsible in Utah for that seventeen-year period.

I then contacted each one of those people, except for one individual who was retired, and I could

Vol. R. 10285-173

not reach. That included contacting two or three retired people that I was able to reach.

And I asked each one of those people, "Can you tell me, of any of the cases you've handled, which ones are excess verdicts?"

I developed a list. I then contacted each of the defense counsel in Utah that had handled these cases. I contacted Rick Glauser, I contacted Phil Ivie, I contacted Darwin Hansen, I contacted Richard Spratley, and I contacted Mr. Belnap's office. And I asked them, I needed them to do a check within their firm of files they'd handled with excess verdicts.

I developed a list from each location and they matched. And when they matched I knew that I'd located all the files.

Q And Mr. Arnold, in excluding this Campbell case, how many verdicts in excess of limits occurred between 1978 and 19 —

A '95?

Q 1995.

A I can tell you that, that would also include through 1996.

Q In the state of Utah?

A Yes, that's right.

Q How many?

Vol. R. 10285-174

A Seven, including the Campbell case.

* * *

Q . . . And by the way, are all these a matter of public record if somebody wanted to go research the court dockets?

A Yes, if they're part of the court dockets, they would be a matter of public record, that's correct.

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Vol. R. 10285-181

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Q In each of these cases, Mr. Arnold, did State Farm step up and resolve each of these cases after the

Vol. R. 10285-182

verdict was brought in, in an amount in excess of the policy limits?

A Yes, in every case, above the policy limits.

Q And Mr. Arnold, if, in any of these cases, if the insured ever lost any assets or property as a result of the excess verdicts?

A In my review of the file, none lost any assets or any property.

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Vol. R. 10285-185

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CROSS EXAMINATION BY MR. CHRISTENSEN:

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Vol. R. 10285-194

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Q (BY MR. CHRISTENSEN) You've mentioned excess verdict cases that you found when you made your search for excess verdict cases in Utah. You and Mr. Belnap just discussed those, right?

A Yes, we discussed those excess cases, that's true.

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Vol. R. 10285-204

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Q . . . They don't keep records of excess verdicts; is that correct?

A I testified in direct examination with Mr. Belnap that we don't keep those. We've only had seven out of 3,700 lawsuits. The number is so small, we know when these happen, it's a significant event, we view it very seriously when it appears, and we respond and handle

it.

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Vol. R. 10285-205

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Q Now, you have testified how confident you are of the accuracy of your search. I'm going to show you State Farm's — The jury's seen this before, we'll see it once more. State Farm, under oath, represented, and Mr. Paul Short signed these —

A When was this? What's the date?

Q The date on those, and I've got the sheet on that, the date on those is January 21, '94.

A Okay.

Q And in this case, the answer to interrogatory was, "Defendant has inquired of claims management personnel, and they cannot recall any other excess verdicts during the eighties other than the Campbell case." And the question asked for all of the excess verdicts since 1980. Do you see that?

A Yes, I see the question.

Q So the question called for excess verdicts from 1980 up to the date of the answer, which would have

Vol. R. 10285-206

been January, 1994.

A Yes, interrogatory, that would be right.

Q And Mr. Paul Short signed this. When I looked at these documents last night, I found something quite interesting. One of these excess verdicts, it was the Hamblin versus Hall case, was under Mr. Short's jurisdiction, wasn't it?

A He got a carbon copy of that letter, that's correct. I don't know if he was the handler or the superintendent responsible for the file, I don't know that.

Q A judgment was around December of '93, wasn't it? I don't have the judgment in this particular file, but I see a letter dated December 27th, '93, saying "This letter will confirm the granting of an extension to respond to the judgment."

A It was in December, middle of December of '93. So if that helps —

Q So Mr. Short had an excess verdict in December of '93, and a month later he is signing answers to interrogatories indicating the only excess verdict that State Farm management can recall is the Campbell case.

MR. BELNAP: Your Honor, that misstates the answer.

Vol. R. 10285-207

THE COURT: Put it on, let the jury read the answer.

Q (BY MR. CHRISTENSEN) Well, they need to read the question, too. A fair answer to that question would have revealed the excess verdict in Hamblin versus Hall that happened a month before those were signed by Mr. Short, wouldn't it?

A I don't know that to be true, and I don't necessarily agree with that. Number one, I don't know that Mr. Short was responsible for that file or had knowledge of it. I just simply don't know that.

Number two, the answer to the interrogatory, in an attempt to reasonably respond to this interrogatory, this search took hours and hours. And to say that we weren't up front about that, an interrogatory is an ongoing process, as you know, and we gave you all those seven excess verdicts.

Q A few months ago after a court hearing?

A It was more than a few months ago. I think it was March when I testified in the evidentiary hearing, early March, we talked about this specifically, so that's four and a half months.

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Vol. R. 10285-227

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Q When did you gain this detailed knowledge of these class actions?

A Well, as I testified, when Mr. Belnap was instructing me, or as he was examining me on direct examination, I had personal knowledge of these cases when I was in California. I knew details of the cases, and so I knew exactly what was going on in those cases. I verified some numbers that I had already had recently, but I'd had knowledge of these cases.

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Vol. R. 10285-228

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Q (BY MR. CHRISTENSEN) You're aware that we presented that evidence, and since my questions were put on the board I want to make sure they're viewed in the proper light.

We were allowed, under the guidance we received from the court, we were only allowed to bring up enough of these cases to show that people like regulators, who said they were aware, may not know what's going on. That was the limited purpose that we could use those for. You understand that?

A I don't know what the purpose, I wasn't here when the court ruled —

Q We weren't allowed to bring in the attorneys that handled them and explain the details. You understand that?

A Yeah, I understand what you're telling me, sure.

Q When did you first start studying up on these cases to testify?

A Well, as I've testified, I didn't study up on these cases. I had personal knowledge of these two cases, because I worked in California. Mr. Moskalski,

Vol. R. 10285-229

who works in Colorado, he's never worked in California that I'm aware of, maybe he has, but I don't think he's worked there during the time frame of these cases, which is '87 to present.

Q So you didn't study it, you just knew —

A I knew the information, I said, and I called and verified it.

Q Called who?

A I called our legal department to find out, to verify what I knew about the case.

Q When did you do that?

A I did that two days ago.

Q You're aware State Farm hasn't given us any documents on class actions.

A I believe almost everything we've referred to is a matter of public record.

Q Well, it's information that we got from calling around and gave to State Farm's counsel a number of weeks ago. Do you understand that's where it came from?

A That information? I don't know where it came from.

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Vol. R. 10285-230

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Q (BY MR. CHRISTENSEN) All right. Let me show you an article from the Los Angeles Times which says, "State Farm has agreed to settle a class action lawsuit alleging that the company cheated more than 2 million California customers by using inferior parts to repair cars."

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THE COURT: You showed that to the insurance commissioner, correct?

MR. CHRISTENSEN: Yes, I did.

Vol. R. 10285-231

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Q (BY MR. CHRISTENSEN) These are true statements, aren't they, that it was alleged that the company had cheated more than 2 million California customers?

A I'm sorry, I was reading it, I didn't hear your question.

Q That's a true statement. That was the allegation, wasn't it?

A That was, yeah, simply the allegation, I believe. I don't know if 2 million is the right number. I don't recall. Or I don't know the exact size of the class. But I think it's about that.

Q And I would like the jury to understand what a class action is. It's where a group of people join together with common claims, right? Or do you know?

A Yeah, if the claims — Somebody feels like they haven't been treated fairly, if they have a legal basis or a factual basis for believing that others have been treated unfairly, then they can form a class.

Now, I don't think the allegation is actually that we cheated. I don't agree with that. I think I've stated previously what the allegation was.

Q The allegation was —

A It's not "cheated," though.

Vol. R. 10285-232

Q It had not been disclosed, and the parts were inferior; isn't that correct?

A The parts weren't of like kind and quality, and there was no up-front disclosure. That doesn't mean "cheated."

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Q (BY MR. CHRISTENSEN) And the court, under Rule 23 of the rules of procedure, has to certify the class. A judge has to decide that it's a proper class, don't they?

A The judge decides, yeah. He certifies the class, that's right.

Q And a class action can only be settled with the approval of the judge; isn't that true?

A I believe that's true, yes. I don't know all the legalities, but I know quite a few of them.

Vol. R. 10285-233

Q And the reason that they exist in the law is, if you take this — For example, say you have a large group of people who have not been given, say, $100 each. It would not be practical for any one of them to go to court over that, would it? You can't go to court over $100.

A That's —

Q So the law recognizes a class action to allow a group of people to join together, and now it is feasible to go to court. Is that consistent with your understanding?

A That's- - Yeah, I would say that's consistent.

Q And that's really the only feasible way under the law to deal--and I realize you don't admit these allegations are true, you deny them--but if you were to assume this sort of thing was true, it would be the only feasible way for a large group of people to deal with the problem. Isn't that true?

A Well, as a group, if any of these individuals had problems with any of these items, all they would have needed to do was come to us, and if there was correction

needed we would have taken care of it.

Q . . . By the way,

Vol. R. 10285-234

do you know how the figure of $35 each was arrived at?

A I don't recall that. I'm not sure.

Q If we take 2 million, if we take 2,300,000 times thirty-five, that's about $80,500,000. You want to write that down? This 2 million was the number of people whose cars had been fixed in California using these after-market parts, wasn't it?

MR. BELNAP: Your Honor, I'm going to object. If he wants to rely on this, his own article talks about the fact the company does not anticipate a flurry of claims from its 2 million policy holders. And so the plaintiff's counsel was claiming that every single policy holder was a member of the class, and the court said no.

MR. CHRISTENSEN: Well, you represent that. I don't know if it's true or not.

MR. BELNAP: Well, maybe you ought to do your homework.

Q (BY MR. CHRISTENSEN) There were 2 million people, isn't that true, in California, who had had their cars fixed with these after-market parts.

A I don't believe that's what that says. The court said that there was 45,000 people affected, not 2 million. The court said that. State Farm didn't say that, and the plaintiff didn't say that. The court said

Vol. R. 10285-235

it. That's why there's 45,000 letters. Not 2 million. So that figure —

Q Where does the 2 million come from?

A It sounds like to me it's saying 2 million California policy holders. Maybe that's the number of — I don't know where that comes from. I couldn't answer that.

Q Is it your testimony, under oath, that if I were to go search the court records in California, that I would find that there were not 2 million people whose cars were fixed using after-market parts from '87 until '95 in California?

A What I'm telling you is I don't know how many people had their cars fixed, number one, and number

two, not all those repair estimates would have had after-market parts on them. That's an assumption you're making. But the court said 45,000, not anybody else. The court said 45,000, not 2 million.

Q And of that group, only 2,000, roughly, did anything.

A 2,215, that's how many responded to the 45,000 letters that went out.

Q For most people, going through the hassle isn't worth it for 35 bucks, is it?

A I wouldn't agree with that at all. The claim

Vol. R. 10285-236

form is a very simple claim form, the person doesn't have to make a call, all they have to do is fill out the claim form, mail it back in and get the $35. There's no hassle. I think if somebody felt like they had inferior parts, they would have sent it back in. The bottom line is, hardly anybody felt like they had inferior ports.

Q How much did State Farm pay in California? What's your testimony, $87,000?

A I think I transposed those two. It was $77,525.

Q Do you want to write that up?

MR. HUMPHERYS: 77 thousand —

THE WITNESS: 525.

Q (BY MR. CHRISTENSEN) The truth is, State Farm knows that only a very small percentage of the people that aren't treated fairly will make a claim, don't they?

A That's not true. They got letters. You're assuming that they didn't know about it. It was published in the newspaper. They got letters, they knew about it.

Q This is enormously profitable for State Farm, isn't it?

A That's absolutely false. This is — Using like kind and quality parts or quality replacement

Vol. R. 10285-237

parts, there's nothing wrong with that. That's simply good business. And that's allowed by all the departments of insurance, all the regulations, all the laws of each of the states. That's standard industry practice. There's nothing wrong with that.

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Vol. R. 10285-239

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Q (BY MR. CHRISTENSEN) All right, let me move quickly to the Illinois case. This is a letter from the Los Angeles — That's the wrong one. This is from the Chicago Tribune. This says, "The company said up to 80,000 policy holders could be covered under the terms of the settlement," and you said 80,000 letters went out?

A 80,000 — Yes, initially 80,000 letters went out, I believe.

Q And that's because 80,000 people in Illinois had their cars repaired with these parts that were being called into question; isn't that true?

A Yeah. I don't know how the number 80,000 was established, but I believe 80,000 is the number of people that may have been affected. But I don't know if it was true that they were or not. I don't know.

Q I thought you knew all about this case.

A Well, I didn't say I knew everything about this case. What I said was I had knowledge of this when I worked in California. And I'd have knowledge of it,

Vol. R. 10285-240

and that's what I'm here to talk about.

Q And in this case settlement was $40, right?

A That's correct. And the Krusinski case was $40 per claim. Or the person could redeem a certificate, as we stated earlier, to have the vehicle redone.

Q All right. If we take $80,000 times 40, that's — Let me try this again.

MR. HANNI: $3,200,000.

MR. CHRISTENSEN: $3,200,000, thank you.

MR. BELNAP: Your Honor, I'm going to object to that, because it misstates the actual fact of the process which was determined by the court in that case, for anybody that was dissatisfied to send in a claim, or that they could obtain a certificate. And so to put up there that you're taking that leap is a misstatement of actual record.

Q (BY MR. CHRISTENSEN) And how much did you say State Farm had to give back to people?

THE COURT: I'll overrule the objection, but it's stated before the jury —

MR. CHRISTENSEN: It's represented by counsel. And as I say, we're at the end of the trial.

Q (BY MR. CHRISTENSEN) How much did State Farm give back in Illinois to these people?

Vol. R. 10285-241

A The claim payments — There was only 1,301 that filed a claim out of the 80,000 letters. And the total payment was $87,000, I think, when I originally said I had crossed the two up.

Q $87,000. And $40 a car really doesn't represent how much State Farm saves, does it? They save a lot more than that, don't they?

A I've testified that — There's nothing wrong with using after-market parts. I don't know how the $40 figure is computed. And to say that we do this to cheat people is just ridiculous. We don't cheat people.

Q But that was the allegation in Illinois, wasn't it?

A I don't think you saw the word "cheat" in there, did you? I don't recall seeing it.

Q It was alleged that the parts were of inferior quality, and the people whose cars were fixed weren't told, wasn't it?

A That was the allegation, correct.

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Vol. R. 10285-243

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Q (BY MR. CHRISTENSEN) Now, you have said — and I'm surprised you'd say this--that the excess verdicts are available in the court records, and anybody that wants to find out what excess verdicts have been against State Farm policy holders just has to go down and look. That's not true, is it?

A I think that misrepresents what I said. I think Mr. Belnap's question to me was those cases that we have provided you summaries with three and a half months ago were a matter of public record. I didn't say

Vol. R. 10285-244

the cases, all excess verdicts in any state were a matter of public record. If you didn't know which cases they

were. That's what you need to know.

Q Well, the courts don't write anywhere "excess verdict," do they?

A That's what I just said. I just clarified. You misrepresented my testimony.

Q And State Farm isn't even a party in these cases, are they?

A No, my testimony was that those cases, when we gave you the names on them, you could go look them up. Not that you could go look up every case and figure out if it was an excess verdict. That's not my testimony.

Q Okay, you can't do that, can you?

A Well, no, you can't unless you know the name of the case or the case number.

Q Well, even if you did that, the court file usually doesn't say how much the insurance was.

A That would be true, too. I don't think it would be a matter of record as far as how much the policy was for.

MR. CHRISTENSEN: All right, thank you.

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Vol. R. 10285-248

THE COURT: Defense rests?

MR. BELNAP: We do, Your Honor, with this exception. We have some matters to take up with the court that we would want it reflected, if it's agreeable with Your Honor, that those could be done as if the case was still open. Motions that we have talked with Your Honor about, the tendering of some exhibits, which we don't want to take the jury's time as we sort through those, and an additional proffer on a witness that I have to provide to you in writing. Those matters, if they can be deemed as if the case is still open and done at a later time, then we rest.

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